

ALASKA LEGISLATURE

1335

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

(2) the planning, design, and construction of court facilities but, in the exercise of its authority under this paragraph, the supreme court shall cooperate and coordinate with the Department of Transportation and Public Facilities so that court facility construction projects are carried out in accordance with the statutes and regulations applicable to state public works projects.

* Sec. 3. AS 24.20.060 is amended to read:

Sec. 24.20.060. POWERS. The legislative council has the power

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents, and testimony, and to have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions when consistent with the powers and duties assigned to the council by AS 24.20.010 - 24.20.140;

(3) to call upon all state officials, agencies, and institutions to give full cooperation to the council and its executive director by collecting and furnishing information, conducting studies, and making recommendations;

(4) in addition to providing the administrative services required for the operation of the legislative branch,

(A) to provide the technical staff assistance in research, reporting, drafting, and counseling requested by standing, interim, and special committees and spot research and drafting services for individual members in conformity with law and legislative rules;

(B) to conduct a continuing program for the revision and publication of the acts of the legislature;

(C) to execute a program for the oversight of the administration and construction of laws by state agencies and the courts through regulations, opinions, and rulings;

(D) to operate and maintain the state legislative reference library;

(E) to do all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature;

(F) to sue in the name of the legislature during the interim between sessions if authorized by majority vote of the full membership of the council;

(5) to exercise control and direction over all legislative space, supplies, and equipment and permanent legislative help between legislative sessions; the exercise of control over legislative space is

subject to AS 36.30.080(c) if the exercise involves the rent or lease of facilities, and to AS 36.30.085 if the exercise involves the acquisition of facilities by lease-purchase or lease-financing agreement:

(6) to produce, publish, distribute, and to contract for the printing of reports, memoranda, and other materials it finds necessary to the accomplishment of its work;

(7) to take appropriate action for the preconvening and post-session work of each legislative session including the employment one week in advance of each session of not more than 10 temporary legislative employees; the continuing employment of the temporary legislative employees is subject to legislative approval when the session convenes;

(8) to establish a legislative internship program on a cooperative basis with the University of Alaska that will provide for the assignment of interns to standing committees of each house of the legislature during regular sessions of the legislature; [,] and

(9) to establish reasonable fees for services and materials provided by the Legislative Affairs Agency to entities outside of the legislative branch of state government and charges for collecting the fees; all fees and charges collected under this paragraph shall be deposited into the general fund.

* Sec. 4. AS 36.30.020 is amended to read:

Sec. 36.30.020. LEGISLATURE. The Legislative Council shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council. The procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085 [AS 36.30.080(b) - (e)].

* Sec. 5. AS 36.30.030 is amended to read:

Sec. 36.30.030. COURT SYSTEM. The administrative director of courts shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the judicial branch as determined by the administrative director of courts. The procedures must be consistent with the provisions of AS 36.30.080(c) - (e) and 36.30.085 [AS 36.30.080(b) - (c)].

* Sec. 6. AS 36.30.080(c) is amended to read:

(c) If the department, the Board of Regents of the University of Alaska, the legislative council [BRANCH], or the supreme court [JUDICIAL BRANCH] intends to enter into or renew a lease of real property with an

annual rent to the department, University of Alaska, legislative council [BRANCH], or supreme court [JUDICIAL BRANCH] that is anticipated to exceed \$500,000 [\$1,000,000], or with total lease payments that exceed \$2,500,000 [\$10,000,000] for the full term of the lease, including any renewal options that are defined in the lease, the department, the Board of Regents, the legislative council [BRANCH], or supreme court [JUDICIAL BRANCH] shall provide notice to the legislature. [IF THE DEPARTMENT, LEGISLATIVE BRANCH, OR JUDICIAL BRANCH INTENDS TO ENTER INTO OR RENEW A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT FOR REAL PROPERTY, OTHER THAN (1) AN AGREEMENT RELATED TO THE REFINANCING OF AN OUTSTANDING BALANCE OWING OR (2) A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT BY THE UNIVERSITY OF ALASKA THAT IS SECURED BY STUDENT FEES OR UNIVERSITY RECEIPTS AS DEFINED IN AS 14.40.491, THAT HAS ANNUAL LEASE PAYMENTS OF LESS THAN \$1,000,000, AND FOR WHICH THE TOTAL LEASE PAYMENTS FOR THE FULL TERM WILL NOT EXCEED \$10,000,000, THE DEPARTMENT, LEGISLATIVE BRANCH, OR JUDICIAL BRANCH SHALL PROVIDE NOTICE TO THE LEGISLATURE.] The notice must include the anticipated annual lease obligation amount [, THE ANTICIPATED TOTAL CONSTRUCTION, ACQUISITION, OR OTHER COSTS OF THE PROJECT,] and the total lease payments for the full term of the lease [, IF THE AGREEMENT IS A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT, OR IF THE AGREEMENT IS A LEASE OTHER THAN A LEASE-PURCHASE OR LEASE-FINANCING AGREEMENT AND THE TOTAL LEASE PAYMENTS FOR THE FULL TERM OF THE LEASE EXCEED \$10,000,000]. The department, the Board of Regents, the legislative council, and the supreme court may not enter into or renew a lease of real property

(1) [AN AGREEMENT] requiring notice under this subsection unless the proposed lease or renewal of a lease [PROJECT] has been approved by the legislature by law: an [. AN] appropriation for the rent payable during the initial period of the lease or the initial period of lease renewal [PROJECT] constitutes approval of the proposed lease or renewal of a lease [PROJECT] for purposes of this paragraph [SUBSECTION]:

(2) [. THE DEPARTMENT MAY NOT ENTER INTO AN AGREEMENT] under this subsection if the total of all optional renewal periods provided for in [PERIOD ALLOWED UNDER] the lease [AGREEMENT] exceeds the original term of the lease exclusive of the total period of all renewal options [TWO YEARS. IN THIS SUBSECTION, "TERM" INCLUDES DEFINED RENEWAL OPTIONS].

* Sec. 7. AS 36.30 is amended by adding a new section to read:

Sec. 36.30.085. LEASE-PURCHASE AGREEMENTS. (a) To perform its duties and statutory functions, the department, the Board of Regents of the University of Alaska, the legislative council, or the

supreme court may enter into lease-purchase agreements. The department, the Board of Regents, the legislative council, or the supreme court may enter into a lease-purchase agreement only if the department, the Board of Regents, the legislative council, or the supreme court is the lessee under the agreement.

(b) When evaluating proposals to acquire real property under a lease-purchase agreement, the department, the Board of Regents, the legislative council, or the supreme court shall consider

(1) in addition to lease costs, the life cycle costs, function, indoor environment, public convenience, planning, design, appearance, and location of the real property proposed for acquisition; and

(2) whether acquisition of the real property by lease-purchase agreement is likely to be the least costly means to provide the space.

(c) A lease-purchase agreement

(1) may not provide for a period of occupancy under the full term of the lease-purchase agreement that is greater than 40 years;

(2) must provide that lease payments made by the department, the Board of Regents, the legislative council, or the supreme court are subject to annual appropriation.

(d) If the department, Board of Regents, legislative council, or supreme court intends to enter into or renew a lease-purchase agreement for real property, the department, Board of Regents, legislative council, or supreme court shall provide notice to the legislature. The notice must include the

(1) anticipated total construction, acquisition, or other costs of the project;

(2) anticipated annual amount of the rental obligation; and

(3) total lease payments for the full term of the lease-purchase agreement.

(e) The department, the Board of Regents, the legislative council, or the supreme court may not enter into a lease-purchase agreement to acquire real property unless the agreement has been approved by the legislature by law.

(f) The provisions of (d) and (e) of this section do not apply to a lease-purchase agreement

(1) related to the refinancing of an outstanding balance owing on an existing lease-purchase agreement; or

(2) by the University of Alaska if the lease-purchase agreement is secured by student fees or university receipts as defined in AS 14.40.491.

(g) In this section,

- (1) "full term of the lease-purchase agreement" includes all renewal options that are defined within the lease-purchase agreement;
- (2) "lease-purchase agreement" includes a lease-financing agreement.

* Sec. 8. AS 36.30.850(b)(5) is amended to read:

(5) acquisitions or disposals of real property or interest in real property, except as provided in AS 36.30.080 and 36.30.085:

* Sec. 9. AS 36.30.850(c) is amended to read:

(c) Except for AS 36.30.085 and 36.30.700 - 36.30.790 [AS 36.30.700 - 36.30.790], this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

* Sec. 10. AS 38.05.030 is amended by adding a new subsection to read:

(g) This chapter does not authorize the commissioner or any employee of the department to acquire title to real property through the use of lease-purchase agreements or lease-financing agreements in which the department is the lessor. For purposes of this section, "lease-purchase agreement" and "lease-financing agreement" have the meanings given those terms in AS 36.30.990.

* Sec. 11. AS 36.30.080(b) is repealed.

* Sec. 12. **APPLICABILITY TO ALASKA COURT SYSTEM AND DEPARTMENT OF NATURAL RESOURCES.** (a) Notwithstanding the amendments of AS 22.05.025(a) made by sec. 2 of this Act, AS 36.30.030 made by sec. 5 of this Act, and AS 36.30.080(c) made by sec. 6 of this Act, the addition of AS 36.30.085 made by sec. 7 of this Act, and the repeal of AS 36.30.080(b) made by sec. 11 of this Act, after the effective date of this section and until December 31, 1994, the Alaska Supreme Court may continue to enter into lease-purchase or lease-financing agreements for the judicial branch under the provisions of AS 22.05.025(a), AS 36.30.030, 36.30.080(b), and 36.30.080(c) as they read before their amendment or repeal by this Act.

(b) Notwithstanding the amendments of AS 36.30.080(c) made by sec. 6 of this Act, AS 36.30.850(b)(5) made by sec. 8 of this Act, and AS 36.30.850(c) made by sec. 9 of this Act, the addition of AS 36.30.085 made by sec. 7 of this Act and of AS 38.05.030(g) made by sec. 10 of this Act, and the repeal of AS 36.30.080(b) made by sec. 11 of this Act, after the effective date of this section and until December 31, 1994, the Department of Natural Resources may continue to enter into lease-purchase or lease-financing agreements under the provisions of AS 36.30.080(b), 36.30.080(c), 36.30.850(b)(5), 36.30.850(c), and AS 38.05 as they read before their amendment or repeal by this Act, but only if the Department of Natural Resources is the lessor of the property and the judicial branch is lessee.

* Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

HCS CSSB 129(STA)

HOUSE CS FOR CS FOR SENATE BILL NO. 129(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/24/93

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE
BUDGET AND AUDIT COMMITTEE

A BILL
FOR AN ACT ENTITLED

"An Act relating to state procurement; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 36.30.010(a) is amended to read:

(a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the state. The chief procurement officer must have at least five years of prior experience in public procurement, including large scale procurement of supplies, services, or professional services, and must be a person with demonstrated executive and organizational ability. The chief procurement officer may be removed by the commissioner only for cause. The term of office of the chief procurement officer is ~~six~~ [FOUR] years.

* Sec. 2. AS 36.30.010 is amended by adding new subsections to read:

(c) While a person performs the duties of the chief procurement officer under this chapter, the person may not be employed in or appointed to another position with the state.

(d) The annual salary of the chief procurement officer is range 23 of the salary schedule established in AS 39.27.011.

* Sec. 3. AS 36.30.080(c) is amended to read:

(c) If the department, legislative branch, or judicial branch intends to enter into or renew a lease of real property [OR LEASE-PURCHASE AGREEMENT, EXCEPT AN AGREEMENT RELATED TO A REFINANCING,] with an annual rent to the department, legislative branch, or judicial branch that is anticipated to exceed \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of the lease, the department, legislative branch, or judicial branch shall provide notice

to the legislature. If the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-financing agreement for real property, other than (1) an agreement related to the refinancing of an outstanding balance owing or (2) a lease-purchase or lease-financing agreement by the University of Alaska that is secured by student fees or university receipts as defined in AS 14.40.491, that has annual lease payments of less than \$1,000,000, and for which the total lease payments for the full term will not exceed \$10,000,000, the department, legislative branch, or judicial branch shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount, the anticipated total construction, acquisition, or other costs of the project, and the total lease payments for the full term of the lease, if the agreement is a lease-purchase or lease-financing agreement, or if the agreement is a lease other than a lease-purchase or lease-financing agreement and [, IF] the total lease payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature [BY LAW]. An appropriation for the project constitutes [DOES NOT CONSTITUTE] approval of the project for purposes of this subsection. The department may not enter into an agreement under this subsection if the optional renewal period allowed under the agreement exceeds two years. In this subsection, "term" includes defined renewal options.

* Sec. 4. AS 36.30.300(a) is amended to read:

(a) A contract may be awarded for supplies, services, professional services, or construction without competitive sealed bidding, competitive sealed proposals, or other competition in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities determines in writing that there is only one source for the required procurement or construction. A sole source procurement may not be awarded if a reasonable alternative source exists. The written determination must include findings of fact that support by clear and convincing evidence the determination that only one source exists. Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)], the authority to make the determination required by this subsection may not be delegated.

* Sec. 5. AS 36.30.305(a) is amended to read:

(a) A contract for supplies, services, professional services, or a

construction contract under \$100,000, may be awarded without competitive sealed bidding or competitive sealed proposals, in accordance with regulations adopted by the commissioner. A contract may be awarded under this section only when the chief procurement officer [COMMISSIONER], or, for construction contracts under \$100,000 or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing that a situation exists that makes competitive sealed bidding or competitive sealed proposals impractical or contrary to the public interest. Procurements under this section shall be made with competition that is practicable under the circumstance. Except for procurements of supplies, services, professional services, or construction that do not exceed the amount for small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)], the authority to make a determination required by this section may not be delegated.

* Sec. 6. AS 36.30.310 is amended to read:

Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be made under emergency conditions as defined in regulations adopted by the commissioner when there exists a threat to public health, welfare, or safety, when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest, or to protect public or private property. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but shall be made with competition that is practicable under the circumstances. A written determination by the chief procurement officer of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The written determination must include findings of fact that support the determination. Except when there is insufficient time for the chief procurement officer to make the written determination required by this section, the chief procurement officer may not delegate the authority to make the determination.

* Sec. 7. AS 36.30 is amended by adding a new section to read:

Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT OFFICER; CRIMINAL PENALTY. (a) In a determination made by the chief procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer shall independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested.

(b) If the chief procurement officer knowingly makes a false statement in a determination made by the chief procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer is guilty of a class A misdemeanor.

* Sec. 8. AS 36.30.370 is amended to read:

Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN WRITING BY THE PROCUREMENT OFFICER THAT A COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR CONSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT CONTRACT.]

* Sec. 9. AS 36.30.610(c) is amended to read:

(c) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, within 15 days from the date the appellant's comments on the protest report are due under AS 36.30.605(c) and (d) [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or rejection of the appeal and, if rejected, the reasons for the rejection.

* Sec. 10. AS 36.30.850(b) is amended by adding new paragraphs to read:

(30) contracts that are to be performed in an area outside of the country and that require a knowledge of the customs, procedures, rules, or laws of the area;

(31) contracts that are between the Department of Law and attorneys who are not employed by the state and that are for the review or prosecution of possible violations of the criminal law of the state in situations where the attorney general concludes that an actual or potential conflict of interest makes it inappropriate for the Department of Law to review or prosecute the possible violations.

* Sec. 11. AS 36.30.150(b) is repealed.

* Sec. 12. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the Department of Administration, the University of Alaska, the legislature, and the court system may extend for up to a maximum extension of five years a real property lease that is entered into under AS 36.30, including procedures and regulations adopted under AS 36.30.005(c) and 36.30.020 - 36.30.030, and that is in existence on the effective date of this section if a minimum cost savings of

(1) 10 percent can be achieved on the rent due under the lease;

or

(2) five percent can be achieved on the rent due under the lease and the lessor agrees to make modifications of the leased real property to bring the real property into compliance with the requirements of 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act of 1990).

(b) The cost savings under (a) of this section shall be calculated on

the remaining term of the lease and any renewals, including extensions allowed under (a) of this section.

(c) The Department of Administration, the University of Alaska, the Alaska Court System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative Budget and Audit Committee detailing the leases extended and the cost savings achieved under (a) - (b) of this section. The first report is due July 1, 1994, and must cover the period from the effective date of this section through March 31, 1994. The subsequent reports shall be made October 1, 1994, January 2, 1995, and April 1, 1995.

* Sec. 13. TRANSITIONAL PROVISIONS. (a) With respect to the person holding the position of chief procurement officer on the effective date of this section, the six-year term of the chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act, shall include the time the person holds the position before the effective date of this section.

(b) AS 36.30.010(c) and (d), added by sec. 2 of this Act, apply to the chief procurement officer on and after the effective date of this section.

(c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 4 - 6 and 8 of this Act, and 36.30.850(b)(30) and (31), added by sec. 10 of this Act, apply to a procurement that begins on or after the effective date of this section.

(d) AS 36.30.315, enacted by sec. 7 of this Act, applies to a determination made on or after the effective date of this section.

(e) AS 36.30.610(c), amended by sec. 9 of this Act, applies to a protest report filed under AS 36.30.605 on or after the effective date of this section.

* Sec. 14. (a) Subsections 12(a) and (b) of this Act are repealed December 31, 1994.

(b) Subsection 12(c) of this Act is repealed April 1, 1995.

* Sec. 15. If sec. 12 of this Act takes effect after May 1, 1993, sec. 12 of this Act is retroactive to May 1, 1993.

* Sec. 16. Sections 12 and 15 of this Act take effect immediately under AS 01.10.070(c).

STANDING COMMITTEE REPORTS

SB 35

Forthcoming zero fiscal note for SENATE BILL NO. 35 "An Act providing immunity for the Alaska State Emergency Response Commission, the local emergency planning committees, the Hazardous Substance Spill Technology Review Council, and their members for official actions; and providing for an effective date", as referenced on page 2490, published today from Department of Environmental Conservation.

SB 247

The Finance Committee considered SENATE BILL NO. 247 "An Act relating to state leases and to state lease-purchase and lease-financing agreements, and repealing a legislative authorization previously given for acquisition of a facility through a lease-purchase agreement; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 247(FIN)

Letter of Intent forthcoming. Signing do pass: Senator Frank, Cochair, Senators Rieger, Jacko. Signing no recommendation:

Senator Kerttula.

Zero fiscal note for the bill and the committee substitute published today from Department of Administration.

SENATE BILL NO. 247 was referred to the Rules Committee.

HJR 36

The Health, Education and Social Services Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 36(HES) Urging the federal Department of Health and Human Services to repeal the "100-hour rule" relating to employment of certain persons receiving AFDC and to replace it with a regulation that will serve as an incentive for AFDC recipients to accept employment of more than 100 hours a month. Signing do pass: Senator Rieger, Chair, Senators Miller, Duncan, Ellis, Sharp, Salo, Leman.

Zero fiscal note for the resolution published today from Department of Health and Social Services.

CS FOR HOUSE JOINT RESOLUTION NO. 36(HES) was referred to the Judiciary Committee.

obtain or provide the service and has an appropriation that may be used for that purpose and if the agency that provides the service bills the agency administering the funds available for that service based on the actual cost to provide the service or a cost allocation method approved by the office of management and budget."

SB 247

The Finance Committee considered SENATE BILL NO. 247 "An Act relating to state leases and to state lease-purchase and lease-financing agreements, and repealing a legislative authorization previously given for acquisition of a facility through a lease-purchase agreement; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 247(2d FIN), entitled:

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements; providing

definitions for applicable terms; and providing for an effective date."

SB 247

and further recommends the previous Finance Committee Letter of Intent offered on page 2581 be adopted.

Signing do pass: Senators Frank, Pearce, Cochairs, Senators Jacko, Kelly, Kerttula, Sharp.

Zero fiscal note for the second finance committee substitute published today from Department of Administration. Previous zero fiscal note applies to the second finance committee substitute.

SENATE BILL NO. 247 was referred to the Rules Committee.

SB 261

The Transportation Committee considered SENATE BILL NO. 261 "An Act relating to municipal sales and use taxes involving air carriers; and providing for an effective date" and recommended it be replaced with

CS FOR SENATE BILL NO. 261(TRA)

Signing do pass: Senator Sharp, Chair, Senators Kelly, Kerttula.

Signing no recommendation: Senator Phillips.

Zero fiscal note for the bill and the committee substitute published today from Department of Community and Regional Affairs.

SENATE BILL NO. 261 was referred to the Community and Regional Affairs Committee.

HB 59

The Resources Committee considered CS FOR HOUSE BILL NO.

59(MLV) "An Act making a special appropriation to the Department of Natural Resources for refunds to certain veterans who purchased state land and for reimbursement to the University of Alaska for the veterans' land discount applied to land transferred to the University of Alaska; and providing for an effective date." Signing do pass:

Senator Miller, Chair, Senators Pearce, Frank, Leman.

HB 59

INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 282

SENATE BILL NO. 282 BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE, entitled:

"An Act relating to matching funds for state grants for public water supply, treatment, and distribution systems, public sewage collection, treatment, and discharge facilities, solid waste processing or disposal facilities, and programs or facilities for enhancing or protecting water quality; and providing for an effective date."

was read the first time and referred to the Community and Regional Affairs, State Affairs, Labor and Commerce and Finance Committees.

SECOND READING OF SENATE BILLS

SB 247

SENATE BILL NO. 247 "An Act relating to state leases and to state lease-purchase and lease-financing agreements, and repealing a legislative authorization previously given for acquisition of a facility through a lease-purchase agreement; and providing for an effective date" was read the second time.

Senator Pearce moved and asked unanimous consent that the 2d Finance Committee Substitute offered on page 2659 be adopted.

Senator Adams objected, then withdrew his objection. There being no further objections, CS FOR SENATE BILL NO. 247(2d FIN)
"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into

lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements; providing definitions for applicable terms; and providing for an effective date" was adopted.

CS FOR SENATE BILL NO. 247(2d FIN) was read the second time.

SB 247

Senator Taylor moved and asked unanimous consent that CS FOR SENATE BILL NO. 247(2d FIN) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 247(2d FIN) was read the third time.

Senator Pearce moved that the Finance Letter of Intent offered on page 2581 be adopted. Senator Ellis objected, then withdrew his objection. There being no further objections, the Senate Letter of Intent was adopted.

The question being: "Shall CS FOR SENATE BILL NO. 247 (2d FIN) "An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to

enter into lease-purchase agreements, and setting limits on the duration of these agreements; providing definitions for applicable terms; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

SB 247
CSSB 247(2d FIN)
Third Reading - Final Passage
Effective Date

YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0
Yeas: Adams, Donley, Duncan, Ellis, Frank, Halford, Jacko, Kelly, Kerttula, Leman, Lincoln, Little, Miller, Pearce, Phillips, Rieger, Salo, Sharp, Taylor, Zharoff
and so, CS FOR SENATE BILL NO. 247(2d FIN) passed the Senate with a Senate Letter of Intent.

Senator Taylor moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

Senator Adams gave notice of reconsideration.

SECOND READING OF SENATE RESOLUTIONS

SJR 40

SENATE JOINT RESOLUTION NO. 40 Urging the Congress to amend the Oil Pollution Act of 1990 with respect to the financial responsibility requirements for offshore exploration and production facilities, was read the second time.

Senator Miller moved for the adoption of the Resources Committee Substitute offered on page 2656. Senator Lincoln objected, then withdrew her objection. There being no further objections, CS FOR SENATE JOINT RESOLUTION NO. 40(RES) was adopted.

CS FOR SENATE JOINT RESOLUTION NO. 40(RES) was read the second time.

Senator Taylor moved and asked unanimous consent that CS FOR SENATE JOINT RESOLUTION NO. 40(RES) be considered engrossed, advanced to third reading and placed on final passage.

Without objection, it was so ordered.

The question to be reconsidered: "Shall CS FOR SENATE JOINT RESOLUTION NO. 40(RES) Urging the Congress to amend the Oil Pollution Act of 1990 with respect to the financial responsibility requirements for offshore exploration and production facilities, pass the Senate?" The roll was taken with the following result:

CSSJR 40(RES)

Third Reading - On Reconsideration

YEAS: 20 NAYS: 0 EXCUSED: 0 ABSENT: 0

Yeas: Adams, Donley, Duncan, Ellis, Frank, Halford, Jacko, Kelly, Kerttula, Leman, Lincoln, Little, Miller, Pearce, Phillips, Rieger, Salo, Sharp, Taylor, Zharoff

and so, CS FOR SENATE JOINT RESOLUTION NO. 40(RES) passed the Senate on reconsideration.

CS FOR SENATE JOINT RESOLUTION NO. 40(RES) was referred to the Secretary for engrossment.

SB 247

Senator Adams requested that the reconsideration on CS FOR SENATE BILL NO. 247(2d FIN) be taken up.

SENATE BILLS IN THIRD READING

SB 247

CS FOR SENATE BILL NO. 247(2d FIN) was before the Senate on reconsideration.

The question to be reconsidered: "Shall CS FOR SENATE BILL NO. 247(2d FIN) "An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts;

authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements; providing definitions for applicable terms; and providing for an effective date" pass the Senate?" The roll was taken with the following result:

CSSB 247(2D FIN)

Third Reading - On Reconsideration

Effective Date

YEAS: 17 NAYS: 3 EXCUSED: 0 ABSENT: 0

Yeas: Doniey, Frank, Halford, Jacko, Kelly, Kerttula, Leman, Lincoln, Little, Miller, Pearce, Phillips, Rieger, Salo, Sharp, Taylor, Zharoff

Nays: Adams, Duncan, Ellis

Zharoff changed from "Nay" to "Yea".

SB 247

and so, CS FOR SENATE BILL NO. 247(2d FIN) passed the Senate on reconsideration.

Senator Taylor moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clause. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 247(2d FIN) was referred to the Secretary for engrossment.

construction of a highway project; and allowing state leases and materials sales for reconstruction and maintenance of state highways and construction or maintenance of airports."

SB 210

and recommends it be replaced with:

HOUSE CS FOR CS FOR SENATE BILL NO. 210(FIN)

(same title)

The report was signed by Representatives Larson and MacLean, Co-chairs, with the following individual recommendations:

Do pass (8): Larson, Hanley, Martin, Parnell, Navarre, Brown, Therriault, Foster

No recommendation (2): MacLean, Grussendorf

The following fiscal notes apply to HCS CSSB 210(FIN):

Senate fiscal note, Dept. of Natural Resources, 2/15/94

Senate zero fiscal note, Dept. of Transportation & Public Facilities, 2/7/94

CSSB 210(FIN) am was referred to the Rules Committee for placement on the calendar.

SB 247

The Finance Committee has considered:

CS FOR SENATE BILL NO. 247(2d FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing

SB 247

lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts;

authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements;

providing definitions for applicable terms; and providing for an effective date."

and recommends it be replaced with the following committee substitute, with a new title pending authorization by HCR 36:

HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and, with certain exceptions, the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease;

making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, setting limits on the duration of these agreements; providing definitions for applicable terms; and repealing a legislative authorization previously given for acquisition of a facility through a lease-purchase agreement; and providing for an effective date."

The report was signed by Representatives Larson and MacLean, Co-chairs, with the following individual recommendations:

SB 247

Do pass (6): Larson, Hanley, Martin, Parnell, Grussendorf, MacLean

No recommendation (3): Brown, Hoffman, Navarre
Amend (2): Therriault, Foster
The following fiscal notes apply to HCS CSSB 247(FIN):

Senate zero fiscal note, Legislative Affairs Agency, 1/24/94
Senate zero fiscal note, Dept. of Administration, 2/2/94
SB 247 was referred to the Rules Committee for placement on the calendar.

SB 251

The Finance Committee has considered:

CS FOR SENATE BILL NO. 251(FIN) am

"An Act relating to the commercial fishing revolving loan fund and the fisheries enhancement revolving loan fund; and providing for an effective date."

and recommends it be replaced with:

HOUSE CS FOR CS FOR SENATE BILL NO. 251(FIN)

(same title)

The report was signed by Representatives Larson and MacLean, Co-chairs, with the following individual recommendations:

Do pass (2): MacLean, Grussendorf

No recommendation (7): Larson, Hanley, Martin, Parnell, Navarre, Brown, Therriault

The following fiscal note applies to HCS CSSB 251(FIN):

Senate zero fiscal note, Dept. of Commerce & Economic Development, 2/18/94

SB 251

CSSB 251(FIN) am was referred to the Rules Committee for placement on the calendar.

SB 252

The Judiciary Committee has considered:

HOUSE CS FOR CS FOR SENATE BILL NO. 252(JUD)

"An Act prohibiting the possession of child pornography."
and recommends it be replaced with:

HOUSE CS FOR CS FOR SENATE BILL NO. 252(JUD)

(same title)

ADJOURNMENT

Representative Navarre moved and asked unanimous consent that the House adjourn sine die.

Objection was heard.

Representative Navarre moved and asked unanimous consent to withdraw the motion. There being no objection, it was so ordered.

SECOND READING OF HOUSE BILLS

(continued)

HB 548

The question being: "Shall HB 548 pass the House?" The roll was taken with the following result:

HB 548

HB 548

Third Reading

Final Passage

YEAS: 39 NAYS: 1 EXCUSED: 0 ABSENT: 0

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davidson, Davies, B.Davis, G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman, Hudson, James, Kott, Larson, Mackie, Martin, Menard, Moses, Mulder, Navarre, Nicholia, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders, Sitton, Therriault, Toohey, Ulmer, Vezey, Williams, Willis

Nays: MacLean

And so, HB 548 passed the House and was referred to the Chief Clerk for engrossment.

SECOND READING OF SENATE BILLS

SB 247

The following was read the second time:

CS FOR SENATE BILL NO. 247(2d FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing

SB 247

lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts;

authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements;

providing definitions for applicable terms; and providing for an effective date."

with the: Journal Page

FIN RPT HCS(FIN) NEW TITLE 6DP 3NR 2AM	3664
...TITLE CHANGE PENDING AUTHORIZATION	3664
...BY HCR 36	3664
-PREVIOUS SENATE ZERO FN (LAA) 1/24/94	3666
-PREVIOUS SENATE ZERO FN (ADM) 2/2/94	3666

Representative Phillips moved and asked unanimous consent that CSSB 247(2D FIN) be held in second reading until the May 5, 1994, calendar.

There being no objection, it was so ordered.

SB 275

The following was read the second time:

CS FOR SENATE BILL NO. 275(JUD)

"An Act relating to the disposal of real property by the Department of Transportation and Public Facilities."

with the: Journal Page

TRA RPT 5DP	3908
-2 PREVIOUS SEN ZERO FNS (DOT,DNR) 2/11	3909
JUD REFERRAL WAIVED	3943

SB 275

Representative Phillips moved and asked unanimous consent that CSSB 275(JUD) be considered engrossed, advanced to third reading

HOUSE CONCURRENT RESOLUTION NO. 36

Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State Legislature concerning Senate Bill No. 247, relating to state leases and to state lease-purchase and lease-financing agreements.

Representative Phillips moved and asked unanimous consent that HCR 36 be held in second reading until the May 5, 1994, calendar. There being no objection, it was so ordered.

HJR 65

The following was read the second time:

HOUSE JOINT RESOLUTION NO. 65

Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund.

HJR 65

with the: Journal Page

FIN RPT 2DP 7NR 1AM

3747

-FISCAL NOTE (GOV) 4/27/94

3748

There being no objection, it was so ordered.

Representative Phillips moved and asked unanimous consent that HCS CSSB 342(STA) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HCS CSSB 342(STA) was read the third time.

SB 342

The question being: "Shall HCS CSSB 342(STA) pass the House?"
The roll was taken with the following result:

HCS CSSB 342(STA)

Third Reading

Final Passage

YEAS: 37 NAYS: 1 EXCUSED: 0 ABSENT: 2

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davies, B.Davis, G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Mulder, Navarre, Nicholia, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders, Sitton, Toohey, Ulmer, Vezey, Williams, Willis

Nays: Theriault

Absent: Davidson, Moses

And so, HCS CSSB 342(STA) passed the House.

Representative Phillips moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HCS CSSB 342(STA) was referred to the Chief Clerk for engrossment.

SB 247

The following, which had been read the second time and held in second reading until today's calendar (page 3995), was again before the House:

CS FOR SENATE BILL NO. 247(2D FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000

SB 247

or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts;

authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements;

providing definitions for applicable terms; and providing for an effective date."

Representative Phillips moved and asked unanimous consent that the following committee substitute be adopted in lieu of the original bill:

HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and, with certain exceptions, the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease;

making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the

proposed lease-purchase agreement; defining procedures that these
SE 247

entities must follow when considering whether or not to enter into
lease-purchase agreements, setting limits on the duration of these
agreements; providing definitions for applicable terms; and
repealing a legislative authorization previously given for
acquisition of a facility through a lease-purchase agreement; and
providing for an effective date."

There being no objection, it was so ordered.

Amendment No. 1 was offered by Representative Brice:

Page 2, line 5, after " agreements; " (title amendment):

Insert " and "

Page 2, lines 6 - 7 (title amendment):

Delete " and repealing a legislative authorization previously
given for acquisition of a facility through a lease-purchase
agreement; "

Page 9, line 9:

Delete "and sec. 2, ch. 92, SLA 1986, are"

Insert "is"

Representative Brice moved and asked unanimous consent that
Amendment No. 1 be adopted.

Objection was heard.

The question being: "Shall Amendment No. 1 be adopted?" The roll
was taken with the following result:

HCS CSSB 247(FIN)

Second Reading

Amendment No. 1

YEAS: 36 NAYS: 2 EXCUSED: 0 ABSENT: 2

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Yeas: Barnes, Brice, Brown, Bunde, Carney, Davies, B.Davis,
G.Davis, Finkelstein, Foster, Green, Grussendorf, Hoffman, Hudson,
James, Kott, Larson, Mackie, MacLean, Martin, Menard, Mulder,
Navarre, Nicholia, Nordlund, Parnell, Phillips, Porter, Sanders, Sitton,
Therriault, Toohey, Ulmer, Vezey, Williams, Willis

Nays: Hanley, Olberg

Absent: Davidson, Moses

And so, Amendment No. 1 was adopted and the new title appears below:

HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN) am H

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and, with certain exceptions, the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease;

making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, setting limits on the duration of these agreements; and providing definitions for applicable terms; and providing for an effective date."

Representative Phillips moved and asked unanimous consent that HCS CSSB 247(FIN) am H be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

SB 247

HCS CSSB 247(FIN) am H was read the third time.

The question being: "Shall HCS CSSB 247(FIN) am H pass the House?" The roll was taken with the following result:

HCS CSSB 247(FIN) am H

Third Reading

Final Passage

YEAS: 39 NAYS: 0 EXCUSED: 0 ABSENT: 1

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davidson, Davies, B.Davis, G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Mulder, Navarre, Nicholia, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders, Sitton, Therriault, Toohey, Ulmer, Vezey, Williams, Willis

Absent: Moses

And so, HCS CSSB 247(FIN) am H passed the House.

Representative Phillips moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

HCS CSSB 247(FIN) am H was referred to the Chief Clerk for engrossment.

SECOND READING OF HOUSE RESOLUTIONS

HCR 36

The following, which had been read the second time and held until today's calendar (page 3998) was again before the House:

HOUSE CONCURRENT RESOLUTION NO. 36

Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State Legislature concerning Senate Bill No. 247, relating to state leases and to state lease-purchase and lease-financing agreements.

HCR 36

Amendment No. 1 was offered by Representative Navarre:

Page 2, line 6, after "agreements;":

Insert "and"

Page 2, line 6, after "term;":

Delete "and repealing a legislative authorization previously given for acquisition of a facility through a lease-purchase agreement;" Representative Navarre moved and asked unanimous consent that Amendment No. 1 be adopted. There being no objection, it was so ordered.

The question being: "Shall HCR 36 am pass the House?" The roll was taken with the following result:

HCR 36 am
Second Reading
Final Passage

YEAS: 38 NAYS: 0 EXCUSED: 0 ABSENT: 2

Yeas: Barnes, Brice, Brown, Bunde, Carney, Davidson, Davies, B.Davis, G.Davis, Finkelstein, Foster, Green, Grussendorf, Hanley, Hoffman, Hudson, James, Kott, Larson, Mackie, MacLean, Martin, Menard, Navarre, Nicholia, Nordlund, Olberg, Parnell, Phillips, Porter, Sanders, Sitton, Therriault, Toohey, Ulmer, Vezey, Williams, Willis
Absent: Moses, Mulder

And so, HCR 36 am passed the House and was referred to the Chief Clerk for engrossment.

LEGISLATIVE CITATIONS

Representative Phillips moved and asked unanimous consent that the House approve the citations on the calendar. There being no objection, the following citations were approved and sent to enrolling:

Honoring - Usibelli Coal Mine, Fifty Great Years in Alaska

By Representatives Phillips, Barnes, Brice, Bunde, Carney, Davies, B.Davis, G.Davis, Foster, Green, Grussendorf, Hanley, Hudson, James, Kott, Mackie, Menard, Mulder, Navarre, Nicholia, Nordlund, Olberg, Parnell, Porter, Sanders, Sitton, Therriault, Toohey, Ulmer, Vezey, Willis

Honoring - Hobo Jim, Alaska Balladeer

By Representatives Phillips, Barnes, Brice, Bunde, B.Davis, G.Davis, Carney, Foster, Grussendorf, James, Kott, Mackie, MacLean, Menard, Mulder, Navarre, Nicholia, Nordlund, Sanders, Toohey, Ulmer, Willis

Honoring - Dean Schlehofer and Eric Emmons

By Representatives Mulder, Barnes, B.Davis, G.Davis, Foster, James, Kott, Mackie, Menard, Navarre, Nicholia, Phillips, Toohey, Ulmer, Willis

Honoring - Chugiak High School Mustangs, 1994 4-A State Volleyball Champions

By Representatives Willis, Carney, Kott, Bunde, B.Davis, Green, Hanley, Hoffman, James, Mackie, Menard, Mulder, Navarre, Nicholia, Parnell, Sanders, Toohey, Ulmer; Senators Halford, Phillips

Honoring - Capital City High School Science Fair Winners

By Representatives Ulmer, Hudson, Brice, Bunde, Davies, B.Davis, Green, Hoffman, James, Mackie, MacLean, Menard, Navarre, Nicholia, Parnell, Toohey, Ulmer, Willis; Senator Duncan

Honoring - Representative Curt Menard

HOUSE CS FOR CS FOR SENATE BILL NO. 101(FIN)

"An Act relating to interim assistance under the adult public assistance program; requiring the Department of Health and Social Services to consult with the Department of Education in order to develop an application process and disability determination system to implement the adult public assistance program."

SB 132

A message dated May 9, 1994, was read stating the Senate has concurred in the House amendment to CSSB 132(RES) am, thus adopting:

HOUSE CS FOR CS FOR SENATE BILL NO. 132(RES)

"An Act relating to loans for the purchase of individual fishery quota shares; and providing for an effective date."

SB 215

A message dated May 9, 1994, was read stating the Senate has concurred in the House amendment to CSSB 215(FIN) am(efd fld), thus adopting:

HOUSE CS FOR CS FOR SENATE BILL NO. 215(FIN) am H

"An Act relating to oil and hazardous substances; redesignating the oil and hazardous substance release response fund and relating to it; repealing the Citizens' Oversight Council on Oil and Other Hazardous Substances and the authority in law by which marine highway vessels may be designed and constructed to aid in oil and hazardous substance spill cleanup in state marine water using money in the oil and hazardous substance release response fund and repealing the authority of the Department of Environmental Conservation to levy and collect fees for review of certain submissions related to oil; altering requirements applicable to liens for recovery of state expenditures related to oil or hazardous

SB 215

substances; terminating the nickel-per-barrel oil conservation surcharge; levying and collecting two new oil surcharges; and providing for the suspension and reimposition of one of the new surcharges."

âComment: #ã

**The presence of Representatives Menard, Hoffman and Davidson was noted.

SB 247

A message dated May 9, 1994, was read stating the Senate has concurred in the House amendment to:

CS FOR SENATE BILL NO. 247(2d FIN)

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease;

prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease; making subject to prior legislative approval lease-purchase agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts;

authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, and setting limits on the duration of these agreements;

providing definitions for applicable terms; and providing for an effective date."

thus adopting:

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HOUSE CS FOR CS FOR SENATE BILL NO. 247(FIN) am H

"An Act making subject to prior legislative approval contracts entered into or renewed by the executive branch of state government, the legislative council, the Alaska Court System, and, with certain exceptions, the University of Alaska for the lease of real property if the lease has an annual rent payable that is anticipated to exceed \$500,000 or has total payments that exceed \$2,500,000 for the term of the lease, including any renewal options that are defined in the lease; prohibiting these entities from entering into or renewing a lease of real property if any or all renewal periods in the lease exceed the original term of the lease;

making subject to prior legislative approval lease-purchase

agreements that may be entered into by these entities to acquire real property, other than lease-purchase agreements to refinance outstanding balances on existing lease-purchase agreements and lease-purchase agreements secured by University of Alaska student fees and university receipts; authorizing these entities to enter into lease-purchase agreements only in the capacity of lessee under the proposed lease-purchase agreement; defining procedures that these entities must follow when considering whether or not to enter into lease-purchase agreements, setting limits on the duration of these agreements; and providing definitions for applicable terms; and providing for an effective date."

âComment: #ã

A message dated May 9, 1994, was read stating the Senate has passed the following and it is transmitted for consideration:

FIRST READING AND REFERENCE
OF SENATE RESOLUTIONS

SCR 25

SENATE CONCURRENT RESOLUTION NO. 25 by the Senate Rules
Committee:

Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the
Alaska State Legislature concerning House Bill No. 249, relating
to electrical and mechanical administrators.

was read the first time and is on today's calendar.

HB

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SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/21/95

FURTHER:

DATE TURNED INTO OFFICE: 4-13-95

The Finance Committee considered CS FOR HOUSE BILL NO. 183(FIN)

Authority of the Alaska Housing Finance Corporation to use money or another asset of the corporation to acquire or construct a building for the corporation's use and occupancy; prior legislative approval of certain lease-purchase agreements; efd.

and recommends:

- | be replaced with _____ CS _____ (_____)
- | adopt previous _____ CS _____ (_____)
- | attached amendment(s)
- | adopt Letter of Intent by _____ Committee
- | further referral to the _____ Committee

Senate Bill:
 same title
 new title
 House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Rec'd & Rec'd</i>	✓	<i>Paul P. Zhenoff</i>	✓		
<i>Ben Wang</i>	✓				
<i>Steve Baker</i>	✓				
Co-Chair: <i>Rita Halford</i>	✓				
Co-Chair: <i>[Signature]</i>	✓				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#1 DOA	7/23/95	0	

| APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

f: 1
Bill Version: CS HB 183(FIN)
(H) Publish Date: 2/23/95

Revision Date: _____
Title: "An Act extending the requirements of preliminary evaluation, notice, and prior legislative approval of certain..."
Sponsor: Hanley
Requestor: Hanley

Department Affected: Administration
BRU: General Services
Component: Purchasing
COMPONENT SERIAL NO. 50

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of General Services.

Prepared by: Vern Jones, Procurement Officer
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: _____

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RECEIVED **COMMITTEE COPY**



Representative Mark Hanley
Alaska State Legislature

MEMORANDUM

DATE: April 4, 1995

TO: Senator Rick Halford, Co-chair, Senate Finance
Senator Steve Frank, Co-chair, Senate Finance

FROM: Mark Hanley *MH*

SUBJECT: Hearing Request for CSHB 183 (FIN)

Please schedule CSHB 183 (FIN) for a hearing in Senate Finance at your earliest convenience.

We thought the Certificates of Participation issue was solved last year, but began hearing rumors about COP's being issued to build the new Alaska Psychiatric Hospital. The bill in your committee would close that loophole.

Thank you.



Representative Mark Hanley
Alaska State Legislature

SPONSOR STATEMENT

House Bill No. 183

"Certificates of Participation: Part Trois"

HB 183 is intended to close yet another loophole found in the lease-purchase statute, AS 36.30.085.

As currently written, AS 36.30.085 requires legislative approval for *acquisition* by lease-purchase of real property. It does not, however, prevent issuance of certificates of participation (state debt) for *improvement* or *construction* of a state facility.

During the first session of the 18th Legislature, SB129 was passed to require notification to the Legislature before entering into lease-purchase agreements.

SB 247 became law during the second session of the 18th Legislature, and required legislative approval of all lease-purchase agreements.

Now it has come to my attention that an agency could issue certificates of participation for *construction* of real property. Although technically legal under 36.30.085, non-legislative entities obligating state funds remains contrary to legal intent, and the legislature's constitutional power of the purse.

This bill will hopefully close the final loophole.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Mark Hanley
Co-Chair, House Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: February 23, 1995

RE: APH Financing

We have had a chance to make further inquiry into who's on first and what's on second concerning the rumors of COP financing for the new Alaska Psychiatric Hospital. The apparent source of this financing approach comes from the Mental Health Board which envisions a 114 bed facility, including a 20 bed forensic unit funded by the Department of Corrections.

It is our understanding that the Board has recommended that the Governor's Office consider this funding approach. However, we have not found anyone who has acknowledged that they are considering pursuing this funding scheme without legislative involvement. No one we talked to had received a response from the Governor's Office.

To further confuse the matter, some view the legislature's mandate of a 72 bed facility to mean only non-criminal mental health treatment beds; forensic beds would be additional facility accommodations (72 + 20 forensic beds equals a 92 bed facility). Others might argue that the legislature's mandate was the maximum capacity of the facility, all beds included.

The Mental Health Board's vision, as contained in their strategic plan, revised in the fall of 1993, has not wavered in light of the conditional language contained in section 11 of Chapter 3, FSSLA 94.

If we become aware of any further "news", we will let you know.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

MEMORANDUM

TO: The Honorable Steve Frank, Co-Chair
The Honorable Drue Pearce, Co-Chair
Senate Finance Committee

FROM: Randy S. Welker *Randy*
Legislative Auditor

DATE: January 19, 1994

RE: Lease-Financing Legislation - SB 247

We have prepared the following to assist in your deliberations on the proposed amendments to statutes governing lease-financing acquisitions of real property by the State. This legislation is in response to our ongoing review and concern over lease-purchases of the Wildwood Correctional Center and the Court Plaza Building and the proposed purchase of the Anchorage Times Complex.

AS 36.30.080 permits the Department of Administration (DOA) to lease space for the use of the State. It also provides DOA, the legislature, and the judicial branch the authority to enter lease-purchase or lease-financing agreements for the acquisition of real property. AS 36.30.080(c), before SLA 1993 amendments became effective, required that for planned leases or lease-financing that exceed payments of \$1,000,000 annually or \$10,000,000 over the life of the lease or lease-financing notice must be provided to the legislature and a planned lease or lease-financing acquisition by the department must be approved by the legislature by law. Leases or lease-purchases less than \$1,000,000 annually or \$10,000,000 over the life of the lease did not require notice to, or approval by, the legislature.

After numerous failed attempts to obtain capital appropriations to acquire the leased Wildwood Correctional Center, in December 1992 the administration exercised its option under the lease, and acquired the facility under the authority of AS 36.30.080(c) by issuing Certificates of Participation (COP). However, the purchase price exceeded the dollar limitations requiring legislative approval imposed by statute. To circumvent legislative approval, the administration "split" the COP issue into two — each one falling below the \$10,000,000 ceiling, thereby not requiring approval. The deal was also structured so that the annual debt service requirements under each COP debt issue would be slightly below the \$1,000,000 limitation — again avoiding the need for legislative approval, and resulting in

the legislature having to consider annual appropriations for the next eight years until debt service of approximately \$13 million is paid. Non-appropriation — which is an option under this type of arrangement — would result in a detrimental impact to the State's general obligation credit rating.

A Division of Legislative Audit review of the Wildwood acquisition raised serious questions regarding the legality of the financing scheme employed to acquire the facility and the legality of the role of the Department of Natural Resources (DNR) in the process.

In the opinion of Legislative Counsel, the funds raised through the issuance of COPs are subject to legislative appropriation and were of a governmental and public purpose which under the Constitution requires legislative sanction before disbursement. Additionally, both Legislative Counsel and independent counsel engaged by the Legislative Budget and Audit Committee are of the opinion that DNR does not have the authority to issue debt to acquire real property.

Because of the purchase of the Wildwood facility in this manner, intentionally avoiding legislative approval — particularly at a time when the continuance of the facility itself was subject to intense legislative debate — legislation was adopted last session to specifically mandate legislative involvement in this debt issuance/property acquisition process.

Chapter 37, SLA 93 (SB 129) amended AS 36.30.080(c) requiring that "*if the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-financing agreement for real property . . .*" then "*. . . the department, legislative branch, or judicial branch shall provide notice to the legislature.*" The statute also requires that "*the department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature.*" (Emphasis added.)

In the most recent attempt to utilize lease-purchase COP financing to purchase the Anchorage Times Complex, the Court System did provide notice to the legislature of its intentions, however, under the wording of the statute the Court System was not required to obtain legislative approval. SB 247 amends statute to require legislative approval by law for any real property acquisitions via lease-financing by the executive branch, the board of regents of the University of Alaska, the legislative council, and the supreme court.

Senate Bill 247 also amends AS 38.05.030 to specifically prohibit DNR from acquiring real property through the use of lease-purchase agreements or lease-financing agreements in which DNR is the lessor. We believe that there is clear authority under the statutory provisions of the Alaska Housing Finance Corporation to issue lease-backed revenue bonds in accordance with the Housing Project and Public Building Assistance Act (AS 18.55.010-.290) for the acquisition of public buildings. These statutes were previously Alaska State Housing Authority laws but were amended with the merger of ASHA with AHFC.

The Honorable Steve Frank
The Honorable Drue Pearce

-3-

January 19, 1994

We have also included language in this bill to clearly include the University. If the legislature agrees with us that the provisions of leasing should apply to the University, I also recommend that the legislature reconsider an exemption placed in statute last session which we have kept in this bill. Specifically, on page 7, lines 15 and 16, exempt University lease-purchase agreements secured by student fees or other university receipts from the legislative notification and approval requirements of the legislation.

Finally, the bill proposes the repeal of a temporary act, sec. 2, chapter 92, SLA 1986, which gives the court system the authority to enter into a lease-purchase agreement not to exceed \$29.9 million for construction of a court facility in Fairbanks.

We have enclosed a copy of AS 36.30.080 as it is currently written for reference. We have also included a copy of Chapter 92, SLA 86 and a sectional analysis.

Enclosures

HB

191

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 10, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/27/95

The FINANCE Committee considered:

SSHB 191

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191

MANAGEMENT OF STATE LAND AND RESOURCES

"An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing for an effective date."

recommends it be replaced with the following committee substitute (S HB) 191 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DNR

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) Fish : 9 AM 4/10/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Richard Foster</i>	FOSTER	X			
<i>Paul Miller</i>	MILLER			X	
<i>Jean Parnell</i>	Parnell	X			
<i>W. Kohring</i>	Kohring	X			
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Mike Navarre</i>	Navarre			X	
<i>Fay Brown</i>	Brown	X			
<i>Pat Kelly</i>	Kelly				X
<i>Gene Therrawlt</i>	Therrawlt	X			

CO CHAIR'S SIGNATURE _____

Richard Foster
FOSTER

FISCAL NOTE

No. 2

(H) Version: CSSSHE 191 (RES)

(H) Publish Date: 4/10/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____	Dept. Affected: <u>Fish and Game</u>
Title: <u>Management of State Land and Resources</u>	BRU: <u>Habitat and Restoration</u>
Sponsor: <u>Representative Thernault</u>	Component: <u>Habitat</u>
Requester: <u>Resources, Finance</u>	COMPONENT SERIAL NO. <u>486</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1000 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1000 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill is anticipated to have little or no affect on the department's programs. It may have a long-term positive fiscal impact by reducing land use conflicts and thereby reducing the department's workload pertaining to review and response to the Department of Natural Resources' actions.

Prepared by: Ellen Fritts, Acting Director
 Division: Habitat and Restoration
 Approved by Commissioner: *Frank...*
 Agency: ADFS

Phone: 465-4105
 Date: _____
 Date: 3.15.95

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SSHB191

1995 LEGISLATIVE SESSION

Revision Date: 24-Apr-95 Dept Affected: Natural Resources
 Title: An Act relating to the management and disposal of BRU: Resource Development
state land and resources; relating to certain remote parcels and ... Component: Land Development
 Sponsor: Representative Theriault
 Recuestor: _____ Component Serial No. 431

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (1005)	213.3	213.3	213.3	213.3	213.3	213.3

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS	FY96	FY97	FY98	FY99	FY00	FY01
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The changes proposed in this bill will generate more revenues for the State, with the current estimate at approximately \$213.8 more annually than budgeted restricted revenues.

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 24-Apr-95
 Approved by Commissioner: [Signature] Date: 4-25-95
 Agency: Natural Resources

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MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING AND WATER MANAGEMENT

Attachment 1
4/27/95
State of Alaska

(3805.130)

TO: Sara Fisher
Rep. Therriault's Office

DATE: April 18, 1995

THRU: Jules Tileston
Director

FILE NO:

TELEPHONE NO.: 762-2145

FROM: Kerwin Krause *KIC*
Mineral Property Manager

SUBJECT: Title 38

In a recent Superior Court decision (Case No. 1JU-82-2048), involving the AJ rock dump near Juneau, the court ruled that a would-be locator of minerals reserved to the state, but situated in or on land owned by another, is required to obtain "consent" and a damage agreement or bond as a condition precedent to staking a valid location. The decision has been appealed to Supreme Court (Case No. S-6736), and the State in the filing of a Amicus Curiae brief, is requesting the Supreme Court reverse the superior court on the issue in which the superior court determined that "consent" was required from the surface owner of the AJ rock dump prior to mineral claimant staking a claim.

AS 38.05.130 requires an agreement for damages or a surety bond with respect to the exercise of the reserved rights under AS 38.05.125. AS 38.05.125 is silent with respect to claim staking. The State does not oppose the superior court's determination that it is reasonable that a surface owner have notice of entry and be assured of protection from damage due to mineral exploratory activity which leads to staking. The State believes that the superior court erred in it's ruling that a surface owner's "consent" is required under AS 38.05.130. "Consent" implies that the state, or a would be locator must have the surface owner's permission to exercise the rights reserved by the state in AS 38.05.125. That permission is implicitly given when the surface is conveyed. AS 38.05.130 provides only for an agreement regarding damages, not consent.

The superior court's application of AS 38.05.130 to claim staking has the potential to vest the surface owner with power to dictate, among competing locators, whether mineral rights to develop the state's minerals will be exercised. The mineral claimant on the rock dump contends there is several million dollars in "unrecovered" gold remaining in the old tailings. Upon learning that the mineral claimant wanted to mine the remaining gold in the rock dump, the surface owner staked their own junior claims and blocked the senior mineral claimant from receiving the necessary mineral lease by asserting conflicting mineral interests and requested the lease not be issued. The surface owner stopped senior claimant as a would-be developer from developing the state's reserved mineral resource. Later the surface owner dropped their junior claims.

The Superior Court agreed with the surface owner that the claimants claims were invalid because the claimant did not get "consent" to stake. Rights in minerals in property subject to mineral location may be acquired by making a discovery, staking a location, posting a location notice, and recording the certificate of location. The claimant did all this according to law. The Superior Court reasoned that because mineral exploratory activity precedes discovery, a valid location cannot be made unless the would-be locator has made arrangements under AS 38.05.130 even before a claim is staked. Not all mineral exploratory activity is subject to AS 38.05.130. Take for example the hundreds of recent claims staked since January 1955, covering an area of 80 square miles north of Fairbanks. These stakings were based on the release of a state aeromagnetic survey. No ground disturbing mineral exploratory activities occurred. Some of these claims may underlay private or Fairbanks North Star Borough land.

"Consent", as used by the superior court, appears to mean that a mineral claimant must have the surface owner's permission to exercise the rights under AS 38.05.125. This is wrong, and we do not think the legislature would agree with this either. The State has an absolute right to enter land on which it has reserved minerals. Creating a requirement of "consent" significantly diminishes the bundle of rights that the state owns in its reserved mineral estate.

The State reserves the right of access and therefore, the legislature needs to make it clear in this Title 38 amendment package that a surface owner does not receive the right to exclude the state or its lessees, successors or assigns from its reserved mineral estate. The fact that the surface owner has no right to exclude a mineral rights owner from exercising rights associated with the reserved mineral estate complies with the common law theory of mineral estate dominance intended by the Legislature and recognized by the Supreme Court.

If the ambiguity in the law is not fixed, and the superior court decision is not reversed, the exercising of the state's mineral rights on split estate lands is severely diminished.

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

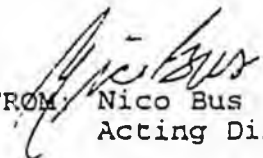
SUPPORT SERVICES DIVISION

TO: John Shively
Commissioner

DATE: February 15, 1995

FILE NO.: landintr

TELEPHONE NO.: 465-2406


FROM: Nico Bus
Acting Director

SUBJECT: Interest Rate
Charged Under
AS 38.05.065

The working group that was established to review the interest rate charged under AS 38.05.065 has completed its work. The findings of the work group are summarized below.

FINDINGS:

1. General Information

The Alaska Lands Act provides for the disposal of State land for private use. Commercial banks and lending institutions normally will not finance the acquisition of unimproved land, especially in remote areas. To reduce the instances of speculation and promote the transfer of State land to the broadest spectrum of the Alaskan population, AS 38.05.065 was passed by the legislature to allow the purchase of land on an installment basis. The contract obligors are not subject to a credit check. A five percent down payment is the only requirement. Title to the land is not conveyed until the installment contract is completely paid.

2. History of Interest Rate Charged

In 1979, the statute (AS 38.05.065) was changed to establish how the interest rate on land sale contracts should be determined. The statute allows for installment payments over a period of 20 years, with interest at the prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska at the time the contract is signed.

The federal land bank was superseded by the Farm Credit Service (FCS) in the 1980's. From 1979 to 1987, only one rate was furnished each month to Division of Land (DOL) by either the federal land bank or FCS. In 1987, FCS provided DOL three variable interest rates classified as Tier I, II, or III. The rates varied from 9.75% for Tier I to 12.25% for Tier III. FCS used the Tier I rate for the most credit worthy applicants. DOL chose to use the Tier III rate since credit information was not required from the contract applicant.

In 1988, FCS replaced the three variable rate tier system. The new system for agriculture loans included four variable interest rates for each of eight different terms (one to thirty years). Each of the 32 rates was subject to a rate code adjustment for credit worthiness. A credit of .61% was allowed for a 5% buy down of the principal (down payment). On November 28, 1988, DOL Director's Policy 89-06, established rate code 6 as the rate that

February 15, 1995

DOL would use as the adjustment for the financial condition of the average Alaskan borrower. Rate code 6 increased the base rate by 1%.

FCS again changed their rate methodology in September 1989. They established one base rate for the eight different terms. A variable rate was used for shorter duration loans (one or five years). For long term loans (ten to thirty years) the one rate that was quoted was a fixed interest rate mortgage. FCS continued to use the six rate codes for credit worthiness. Although they offered fixed rate and variable rate loans, most loans issued were variable rate loans. An attorney for FCS, in July 1989, determined that an equitable fixed rate mortgage loan rate would be 1.75% more than the variable rate used by FCS. Therefore, from September 1989 through December 1994, DOL used the base rate provided by FCS for a 20-year mortgage and adjusted this interest rate upwards 1.75% for the variable to fixed rate adjustment, and increased it an additional 1.00% for the rate code 6 adjustment. This 2.75% increase was then reduced by .61% because land sale contract obligors were required to make a 5% down payment.

In April 1991, FCS again changed their rating system for credit worthiness from six rate codes to five alpha ratings (AAA, AA, A, B, C) for both fixed and variable rate mortgages. They continued to offer the eight different terms. A loan with a rating of AAA was reserved for the most credit worthy applicants. At this time, FCS stopped granting a credit for a down payment amount. Since the FCS is not a public lending institution, it can establish its own rates that favor particular markets and customers. It can, and does, discriminate against less credit worthy borrowers.

3. Prevailing Rate

The Attorney General's Office advised the work group that there is more than one possible interpretation of the "prevailing rate" under AS 38.05.065. Under one interpretation, the prevailing rate could be characterized as the rate used "most frequently" by FCS for real estate mortgages. Under this interpretation, the rate numerically used most often would become the "prevailing rate." This interpretation could result in widely fluctuating rates on DNR land sale contracts. Rates would fluctuate not only as market conditions changed, but also as the "prevailing" mix of mortgages made by FCS changed. The shorter the period (daily, weekly, monthly) used, the more DNR's rate would fluctuate.

Under a second interpretation, the prevailing rate could be characterized as the rate FCS would "generally" use if the land sale contract was a mortgage loan. The FCS uses many different rates based upon the terms of the loan and financial condition of the borrowers. Therefore, FCS cannot fairly be characterized as having "one" prevailing interest rate for real estate mortgages. For January 1995, the "prevailing" rate, in terms of "generally

February 15, 1995

current, widespread, or prevalent" is a range of rates, from 14.7% to 11.0% for twenty-year fixed rate mortgages and a broader range for other types of mortgages. The work group believes that this interpretation is best because the interest rate will more accurately reflect the type of credit DNR extends and DNR's interest rate would not fluctuate merely because FCS makes different types of mortgages.

The Attorney General's office considers both interpretations of the "prevailing rate" under AS 38.05.065 are defensible, as neither is clearly correct nor clearly incorrect.

4. Interest Rate Methodology

Because the base methodology for determining the interest rate has changed since the statute was originally passed in 1979 and is now subject to different interpretations, the Attorney General's Office has advised the work group that the method used to determine the interest rate charged on land sale contracts should either be formalized in a regulation or enacted in legislation. The work group is concerned that, for several reasons, adopting regulations using the interest rates provided by FCS may not be in the best interest of the land sale contract obligors or the State. First, the contract obligors cannot independently verify the interest rates. Second, the rates are not decided by market forces; they fluctuate based on internal management decisions of FCS. Third, there has been a lack of consistency in how FCS has presented interest rates to DNR. In the past eight years, the method of presenting rates by FCS has changed four times. Each change introduced new factors from the previous method. Therefore, FCS's methodology to determine the rates was not consistent, causing DNR to make multiple adjustments.

An alternative to writing a regulation would be to change AS 38.05.065. The statute could be amended to charge a rate that is regularly reported in financial publications like the Wall Street Journal. This rate could be based on the prime rate, a universally accepted rate. The prime rate is the rate that banks charge their most credit worthy corporate borrowers. Since land sale contracts are intended for individuals and not for the most credit worthy corporations, and since no credit information is required, an interest rate higher than the prime rate should be charged. An upper limit could be placed on this rate. The current prime rate is 9.0% and the current interest rate for land sale contracts is 13.14%.

Until a regulation is approved or the statute is amended, an internal management decision should be made to address how the interest rate is calculated by DNR. The rate used in this internal management decision should be one of the five rates (AAA, AA, A, B, C) used by FCS for twenty-year, fixed-rate real estate mortgages. The reasons for choosing the "A" rate include:

February 15, 1995

- a. The "A" rate is the midpoint rate. If one standard rate is chosen, then contract obligors at both ends of the credit worthiness spectrum may pay more or less interest than they should; however, using a mid-range will lessen the financial impact to the average contract obligor.
- b. The rating methodology used by FCS to determine the credit worthiness of an applicant is proprietary information and is not known by DNR. Therefore, even if DNR would obtain credit information from the contract obligor, it would be impossible for DNR to match the credit worthiness of a land sale contract obligor to any one of the five rates provided by FCS.
- c. DNR does not require credit information from the contract obligors. Therefore, DNR does not have the information to decide what credit worthiness rate to apply to each land sale contract. Absent a specific rate to charge, a midpoint rate is the logical one to use.
- d. The AAA rate is reserved for the most credit worthy contract obligor. Normally, a borrower who has received the highest credit worthiness rating from a financial institution will not default on loan payments or have the loan terminated because of lack of payment. The average new DNR land sale contract obligor does not meet these high credit worthy criteria. During 1994, DNR issued 1,126 default notices on approximately 3,700 land sale contracts. The default notice is the first action in the foreclosure process. Most of these defaults were cured before DNR took final action to foreclose on the contracts. However, since 1987 approximately 1,000 contracts were relinquished, terminated, or foreclosed on. Therefore, using the midpoint A rate would recognize the implied financial condition of the average DNR land sale contract obligor.

CONCLUSION:

1. The current interest rate charged by DNR on land sale contracts is an acceptable rate. However, an internal management decision should be made on how this rate is calculated in the future. Our suggestion for this rate is that it be the "A" rate provided by FCS for 20-year, fixed-rate real estate mortgages. Impact: The net impact of following the "A" rating is a drop in the interest rate of roughly .5 percent charged under AS 38.05.065.

February 15, 1995

2. DNR should submit a change to AS 13.05.065 that will revise the interest rate charged on land sale contracts.

Eliminate: "... prevailing rate for real estate mortgage loans made by the federal land bank for the farm credit district for Alaska . . . "

Add: "... prime rate as reported in the Wall Street Journal on the first business day of each month, plus 4%, with the total rate not to exceed 13.5% . . . "

3. While the statutory change is preferred, DOL should adopt a regulation on how the interest rate should be determined. The starting point for this process should be as outlined in 1 above. If legislation is passed, the regulation adoption process should be dropped.

DETERMINATION

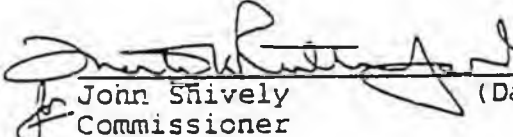


I concur with the conclusions stated in this memo and instruct the Director, Division of Land to implement them

Plus, begin drafting legal language for introduction



I do not concur with the conclusions in this memo

 2-24-95
John Shively (Date)
Commissioner

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



While in Session
State Capitol
Juneau, Alaska
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House Of Representatives

MEMORANDUM

TO: Representative Mark Hanley, Co-Chair
House Finance Committee

FROM: Representative Gene Therriault *Gene*

DATE: April 20, 1995

SUBJECT: Scheduling of HB 191

I respectfully request House Bill 191, "An Act relating to the management and disposal of state land and resources" be scheduled for a hearing in the House Finance Committee.

The Resources committee recommended a committee substitute for HB 191 which expands the bill to address some concerns that were brought up by members of the Resources committee and members of the DNR budget subcommittee. The significant changes include revising the "remote cabin permit program" to a program that would allow for either the sale or lease of land for a remote cabin site. The permit program was never put into action because of the associated administrative costs with a minimal return to the state. The Resources committee substitute also includes a section clarifying that the sale of state land does not obligate the state to provide additional services.

The following information is attached:

1. CS HB 191 (RES)
2. Sectional analysis
3. F&G fiscal note
4. F&G Position paper
5. DNR fiscal note
6. Sponsor statement

I appreciate your consideration of my request.

Attachments (6)

Sectional Analysis of CSSH 191
(9-LS0766\K 4/10/95)

Secs. 1-32, 35-36, and 38-54 affect the Division of Land. Secs. 30 and 32-37 affect the Division of Mining and Water Management. Sec. 31 affects the Division of Oil and Gas. Sec. 51 affects the Division of Parks and Outdoor Recreation.

Sec. 1 would clarify that the department's consideration of timber, firewood, and water supplies before offering land for disposal does not imply that any person has exclusive use of those resources or constitute a limitation on future state disposals. (AS 38.04.010(b).)

Secs. 2-10 are basic housekeeping:

- Secs. 2 and 3 would merge the old "land disposal bank" into the existing state land disposal program. Under laws passed in the last decade, regional land use plans are used to identify land that will be offered for private ownership. More than 2,000,000 acres have been classified through this process, making the land bank obsolete. Related references to the land disposal bank are repealed in Sec. 50. (AS 38.04.020(a)-(b), plus repealers of (c), (f), (j), and (k).)
- Sec. 4 would rewrite AS 38.04.020(d) to retain its substance--a biennial report to the legislature on the current inventory of state land available for disposal--without requiring a separate "land disposal bank." For efficiency, the report would be tailored to the way that inventory is catalogued: by its classification. Land suitable for most commercial, industrial, residential, and private recreational use is grouped together in the "settlement" classification, but is separate from the "agricultural" and "grazing" classifications. (AS 38.04.020(d).)
- Sec. 5 would put the state land disposal program on the same footing as other natural resource sale programs: whether to submit a budget request each year would be discretionary, not mandatory. But each budget proposal would be complete. It would request the full funding needed to get the land disposal projects ready for sale, including any access roads or other capital improvements that might be required. (AS 38.04.020(e).)
- Sec. 6 would make technical corrections, dropping an out-of-order classification reference (land must already be planned and classified for disposal before it is surveyed and platted), an erroneous reference to a homestead "lease," and a reference to homestead staking that would be made obsolete by Secs. 44-45 of this bill. (AS 38.04.020(g).)

- Sec. 7 would make clear that the five-acre limit on subdivision lots applies to land sold for residential and recreational uses, not agricultural parcels, commercial parcels, etc. This clarification is needed because under current law, any division of a tract for purposes of sale constitutes a subdivision. The amendment would also allow larger lots if that would be a better marketing decision for the state. (AS 38.04.020(h).)
- Sec. 8 would update a list of state land disposal programs by adding the homestead law and the remote cabin site lease/sale program, amended by Secs. 22-24 of the bill. (AS 38.04.020(i).)
- Sec. 9 would correct a missing item in the budget appropriation process, clarifying that the commissioner's disposal funding request must go to the governor first, not be sent straight to the legislature. (AS 38.04.021(a).)
- Sec. 10 would delete a cross-reference to an annual land demand study, repealed by this bill. (AS 38.04.021(b).)

Sec. 11 would let the Department of Natural Resources create new land disposal programs by regulation, so long as they provide for competition and produce at least fair market value for the land. (AS 38.04.030.)

Sec. 12 clarifies the legislature's policy that sales of public land to private individuals should be at fair market value unless specifically exempted, and changes a reference to cabin sites in remote areas to conform to Secs. 22-24 of the bill. (AS 38.04.035.)

Sec. 13 deletes language exempting random-staked homesteads and remote parcels from cadastral survey requirements. The remote parcel program was repealed in 1983, effective 1984, and the homestead program was changed in 1988 to preclude random staking. (Remote cabin site leases, as amended by Secs. 22-24 of this section, would be exempt from this statute because they are short-term leases.) (AS 38.04.045(b).)

Secs. 14-16 and 44 respond to a Superior Court decision that it is unconstitutional to make state land purchasers appear in person at a state land sale.

- Sec. 14 would make it discretionary where to hold land auctions and lotteries. (AS 38.05.050.)
- Sec. 15 would delete the personal-appearance requirement for land auctions, allowing bidders to be represented by an agent. (AS 38.05.055.)

- Sec. 16, and a related repealer in Sec. 50, would delete the requirement that purchasers appear in person at land lotteries and pay the down payment on the spot. Instead, they would have 30 days to make the payment. It also drops language about consulting with the local assessor to determine land values, which is unnecessary because AS 38.05.840 requires a formal appraisal before the land can be offered for sale. (AS 38.05.057(a), plus repeal of (g).)
- Sec. 44 deletes the authority to make applicants appear in person at a homestead lottery. (AS 38.09.010(g).)

Secs. 17-19 would change how interest rates are computed for state land sale contracts.

- Secs. 17-18 would repeal the current system that relies on the old Federal Land Bank's "prevailing" rate. (The Federal Land Bank's successor now uses many different rate systems with multiple variables, rather than a single prevailing rate.) It would also change the point at which the rate is determined, solving the problem of the rate changing after the contract is mailed out for signature but before both parties have signed. (State land sale contracts are not signed in a face-to-face closing ceremony.) Sec. 17 would also let contracts for auction parcels be issued for less than 20 years, as already allowed for lottery parcels. (AS 38.05.065(a)-(b).)
- Sec. 19 would replace the old Federal Land Bank interest rate with a new system for state land sale contracts. Interest would be based on the prime rate, the widely quoted market rate used for a bank's most credit-worthy corporate loan customers. A four percent add-on would adjust for the unique circumstances of state land sale contracts, which do not involve any credit check. The total would be capped at 13.5 percent. The rate would be computed monthly and would apply to all contracts prepared that month. (AS 38.05.065(i).)

Sec. 20 would allow agricultural land to be sold at true market value by making it discretionary whether to grant a preference right to adjacent agricultural landowners. A mandatory preference right tends to depress competition or eliminate it altogether, while unaffected parcels are bid up beyond their appraised value. (AS 38.05.069(a).)

Sec. 21 updates the agricultural preference right law (see Sec. 21) by defining the term "adjacent," instead of "approximate vicinity." The latter was removed from the body of the law in 1984. (AS 38.05.069(e)(2).)

Secs. 22-24 would change the remote cabin permit program (a system of 25-year leases with \$100-per-year rental) into a remote cabin site lease/sale program for land disposals in remote, lightly populated areas. At any time during a total term of ten years, the lessee could purchase the site after getting it appraised and surveyed, just as in the former "open-to-entry" and "remote parcel" program (repealed in 1979 and 1993 respectively). (AS 38.05.079(a)-(c), plus a repealer of (d) in Sec. 50.)

Secs. 25-28 and 40, along with certain repealers in Sec. 50, would simplify the process of leasing "shore fishery" (set-net) sites and aquatic farmsites (shellfish and sea vegetable farms). They would repeal requirements that increase administrative costs or keep the state from obtaining a fair return for the use of tidelands and submerged lands.

- Sec. 25 would eliminate a unique leasing process for set-net sites, allowing standard state leasing laws to apply. Negotiated leases could be used up to the standard rental ceiling of \$5,000. Higher-value or contested leases could be awarded at auction, rather than making the director decide who is the "most qualified" applicant. (AS 38.05.082(b).)
- Sec. 26 would eliminate special provisions that prevent the state from obtaining fair market value rental for shore fishery leases. (AS 38.05.082(c).)
- Sec. 27 would amend AS 38.05.082(d), which currently lets the director offer existing lessees a preference right to a renewal lease when it is in the state's best interests. The new language would give existing shore fishery lessees (as of the effective date of the section) the right to a renewal lease.
- Sec. 28 would rewrite the aquatic farmsite law to let standard state leasing laws be used. Sites could be offered directly at auction or by negotiated lease, rather than first being developed under a three-year permit process. As with other types of land disposals and leases, public hearings on the leasing decision would be held as needed, but would not be mandatory. (AS 38.05.083, plus repealers of AS 38.05.855, AS 38.05.856, AS 38.05.946(b).)
- Sec. 40 would delete references in the public notice law to special aquatic farmsite permit procedures repealed by Sec. 40 of the bill: mandatory public hearings and preliminary findings before issuing permits. (AS 38.05.945(a)(5)-(6).)

Sec. 29 would modernize requirements to restore surface lease sites after lease termination, protecting the state against liability and high cleanup costs. Because other provisions of AS 38 apply this leasing statute to terminated homesites, homesteads, remote cabins, etc., special measures of the existing AS 38.05.090 would be retained to compensate individuals for authorized private residential improvements that are not removed from the site and are worth more than \$10,000 net value. (AS 38.05.090.)

Sec. 30 would amend a statute that requires mineral developers to make arrangements with the surface owner, before entering onto the land, to pay for any surface damages that might result. The exception would allow entry to stake the corners of a mining claim, leasehold location, or prospecting site location, an activity that has little or no potential to cause any surface damage. (AS 38.05.130.)

Sec. 31 is a technical amendment narrowing a reference to the "Administration" article of AS 38.05, whose last section (a bonding requirement for the director of the statutory Alaska Division of Lands) would be repealed by Sec. 50 of this bill. (AS 38.05.131(a).)

Sec. 32 would eliminate overly broad language that theoretically allows the department to close state land to "mining," not just to "mineral location" (the act of staking new mining locations). A valid mining claim includes the "exclusive right of ...extraction," i.e. mining rights. The department could not close off already-acquired mining rights without effecting a "taking" of valid existing rights, which would run afoul of Art. I, Sec. 18, and Art. VIII, Sec. 16, of the Alaska Constitution. This amendment would eliminate a potential pitfall. (AS 38.05.185(a).)

Sec. 33 would amend AS 38.05.190(a) to clarify the qualifications for ownership of mining rights by aliens and foreign corporations. Under the existing statute, an alien at least 18 years old from a country that grants "like privileges" to United States citizens may acquire or hold exploration and mining rights. A corporation in which more than 50 percent of the stock is owned or controlled by aliens whose country does not grant reciprocal rights to United States citizens may not acquire or hold exploration and mining rights. However, determinations of which countries grant "like privileges" to United States citizens have never been made or enforced in any consistent manner due to the number and complexity of mining laws worldwide. U.S. mining laws, upon which Alaska laws were initially based, allow an alien to form a domestic corporation that would be qualified to obtain mining rights, without inquiry into "like privileges." Amending AS 38.05.190(a) to delete these requirements would be consistent with modern business practices, similar federal laws, and state laws affecting other types of mineral rights. (AS 38.05.190(a).)

Sec. 34 would repeal and reenact AS 38.05.211(d) to simplify the adjustments to be made in the annual rental amounts due on mining claims and leases. The existing statute requires the rental amounts to be adjusted every 10 years based on changes in the consumer price index for Anchorage. This statutory adjustment is likely to yield odd rental amounts that would make calculating, accounting, and collection more difficult. Additionally, adjusting rental amounts only at 10-year intervals could result in large changes at one time, possibly causing hardships to mining locators and lessees. The amendment would require the department to check the consumer price index each year and adjust the rate if the adjustment is \$5 or more. Changes could only be made in \$5 increments. The amendment also more clearly identifies the consumer price index on which changes are to be based. (AS 38.05.211(d).)

Sec. 35 would authorize surface leases for certain mineral development uses. Surface use needs for small mines are generally modest enough to meet with a simple land use permit, protected by the underlying "exclusive right of possession and extraction of the [locatable] minerals" acquired by a valid mining location. However, most major mines require large-scale, costly surface improvements such as dams, mills, and tailings impoundments. The mineral developer needs long-term security of tenure to protect this investment, something that cannot be provided by a revocable permit. Surface leases for millsites, tailings disposal sites, and similar purposes would require reasonable annual rental. (AS 38.05.255.)

Sec. 36 would add a new subsection to clarify that mining developers' surface leases are not subject to competitive bidding statutes. Requiring the department to hold a lease auction would serve no purpose, as the mineral developer would be the only party in a position to bid for and use the lease. The department would be required to adopt regulations setting leasing procedures and annual rentals. (AS 38.05.255(b).)

Sec. 37 would eliminate the failure to file a lease application on time as grounds for abandonment of a mining location. In areas open to mining only under lease, a locator must apply for and obtain a lease before gaining the right to mine. AS 38.05.205(a). After the department gives public notice of the proposed mining lease, it must promptly mail an application to the leasehold locator, who then has 90 days to file the application. But under the existing AS 38.05.265, failing to file on time automatically causes "abandonment" (voiding) of the leasehold locations involved, too harsh a penalty for a late application. (AS 38.05.265.)

Sec. 38 would allow the department to convey "common areas" in state subdivisions to the subdivision's homeowners' association for retention and management. Many state subdivisions were platted with certain lots reserved from disposal to provide open space and recreation for subdivision residents. The intention was eventually to transfer these reserved lots to local government. But

where there is no local government or it does not want to assume management responsibility, conveyance to the homeowners' association is a logical substitute. The department would be required to ensure that the conveyance serves a public purpose. (AS 38.05.810(a).)

Sec. 39 would clarify that the division can allow livestock grazing, commercial berry picking or mushroom harvesting, and similar minimal-value consumptive uses by issuing permits, an authority the Department of Law recently questioned. (AS 38.05.850(a).)

Sec. 40: See under Secs. 25-28.

Sec. 41 would raise the application fee for homesites from the current \$10 to a maximum of \$25, the same as for lottery parcels. (AS 38.08.030(b).)

Sec. 42 would add a cross-reference to the lottery process used to select the winner of a homesite entry permit (see Sec. 43). It would also require a token annual rental of \$100 until the permit holder "proves up" or purchases the lot. Because a homesite entry permit is a contract, the rental requirement would not apply to existing entry permits. (AS 38.08.040(a).)

Sec. 43 would add a new subsection directing that homesite entry permits be offered at lottery. Using the lottery procedures of AS 38.05.057 was formerly a statutory requirement, but a 1984 amendment left the connection unclear. The department would be required to adopt regulations as consistent as possible with AS 38.05.057. (AS 38.08.040(f).)

Sec. 44: See under Sec. 14-16.

Sec. 45 would raise the fee to receive a non-agricultural homestead entry permit to \$20 per acre. This is a one-time rental fee, lasting for the entry permit's five-year term. The rental fee for agricultural homesteads would remain at the current \$5 per acre. In combination with repealers in Sec. 50 of the bill, it also eliminates staking and legal-description requirements that became obsolete in 1988. In that year, the homestead law was changed to require the department to do a cadastral survey before offering the parcels, instead of making the homesteader survey it five years later. (AS 38.09.030(a), plus repealers of AS 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1).)

Secs. 46-47, along with repealers in Sec. 50 of the bill, reduce and simplify the ways to get title to a homestead parcel. (Currently there are three methods. A homesteader can obtain the land for free by living on it and building a house, plus meeting clearing requirements applicable to agricultural homesteads only. Or he can buy the parcel at almost-current fair market value without building a house

and living on it, if he applies within two years. Or he can buy the parcel at current fair market value without living on the parcel, if he builds a house and applies to purchase within five years.) The revised language in Sec. 46 eliminates the house-building requirement and the distinction between two-year and five-year purchase. The homesteader either buys the parcel at fair market value within five years, or "proves up" by living on the parcel for 25 months. With either method, he must reimburse the state for survey and platting costs, and must meet agricultural clearing requirements if the land is classified agricultural. Sec. 47 is a conforming amendment eliminating a reference to a permanent dwelling. (AS 38.09.050(a)-(b), plus repealers of AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4).)

Sec. 48, along with repealers in Sec. 50 of the bill, affects both the remote parcel program and the homestead program. (The remote parcel law was repealed in 1983, effective in 1984, but the program will be alive until at least the year 2016. The last parcels were staked in 1984, and the last leases issued in 1985-1986. The lessees will have until 1996 or later to survey their parcels, and can then enter into 20-year purchase contracts.) This section would prohibit the department from imposing the conditions of the former AS 38.05.078(d) in new remote parcel purchase contracts. These conditions restricted the sale or subdivision of remote parcel land after it was conveyed into private ownership. It would also allow the department to amend existing remote parcel or homestead purchase contracts or patents to remove these restrictions if the holder consents and reimburses the state for the difference in value. (Each parcel's purchase price was cut by 50% to account for the resale restrictions.) (AS 38.09.105, plus repealers of AS 38.09.050(d)-(e).)

Sec. 49 transfers the homesite disclaimer language of AS 38.08.090 (to be repealed by Sec. 50 of this bill) to a general location applicable to all state land disposals: unless specifically provided, the state is not obligated to provide services to the grantee of a state land disposal. An additional disclaimer would make clear that the state is free to dispose of other land or resources in the future, without restrictions as to type, parcel density, etc.

Sec. 50:

- Repealers affecting the land disposal bank (AS 38.04.020) and down payments at land lotteries (AS 38.05.057(g)) are discussed under Secs. 2 and 16.
- Repealing AS 38.05.057(j) eliminates special lottery procedures for an agricultural project statute that was repealed in 1979.

- Repealing AS 38.05.035(e)(6)(F), AS 38.05.207, and AS 38.05.945(g) would eliminate the mining production license program, an early attempt to solve the "6(i) problem" that became moot when AS 38.05.211-.212 were enacted in 1989.
- Repealing AS 38.05.040 would eliminate the requirement for a \$150,000 bond for the director of the statutory Division of Lands, which was subsequently reorganized and subdivided into several different divisions.
- Repealing AS 38.05.079(d) eliminates an optional sale clause no longer needed for remote cabin site leases (see Secs. 22-24), which are designed to result in sale of the site.
- Repealing AS 38.05.855, AS 38.05.856, and AS 38.05.946(b) eliminates requirements associated with aquatic farmsite permits; see Secs. 28 and 40.
- AS 38.08.090 is made unnecessary by Sec. 49, which broadens its language and expands it to other land disposals.
- Repealing 38.09.010(e), 38.09.020, 38.09.040(a)(2), 38.09.040(a)(4), AS 38.09.060, AS 38.09.070, and 38.09.900(1) eliminates requirements related to staking, flagging, brushing, and filing a legal description on a homestead; see Sec. 45. Repealing AS 38.09.040(a)(3), 38.09.090, 38.09.900(3), and 38.09.900(4) eliminates homestead dwelling requirements and the distinction between two- and five-year purchase; see Sec. 46. Repealing AS 38.09.050(d) and (e) would remove restrictions on selling or subdividing land after it has been conveyed to a homesteader; see related changes under Sec. 39.

Sec. 51 would authorize railroad, highway, and utility line rights-of-way within Chugach State Park necessitated by a Seward Highway relocation project at Bird Point (between Anchorage and Girdwood).

Sec. 52 would specify that the interest rate changes made by Secs. 17-19 of the bill apply to all contracts sent out to be signed after the bill's effective date.

Sec. 53 would ensure that changes made to AS 38.05.082 by Sec. 25 of the bill will continue in effect after 1997, when unrelated changes enacted in 1991 take effect.

Sec. 54 would allow the department to adopt regulations in advance of the bill's effective date, and includes a savings clause for the existing homesite disposal regulations until they can be changed.

Secs. 55-56 are effective date clauses; the regulation clause would take effect immediately, with the remainder of the bill effective July 1, 1995.

DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL NO: HB 191

SPONSOR: Representative Therriault

DIVISION: Habitat and Restoration

DEPARTMENT POSITION:

The department supports the passage of HB191.

This is a housekeeping bill that would clarify certain Title 38 statutes governing DNR's land disposal program, surface uses of mining properties, and permits for rights-of-way. Among other things, the bill contains provisions strengthening the use of the state's land planning process to identify lands suitable for disposal and improves the ability of state to condition ancillary activities (millsites and tailings disposal) associated with the development of mining claims.

The provisions of this bill would have a positive effect on fish and wildlife resources and the management of public lands.

COMMISSIONER'S SIGNATURE

Frank R.

DATE 3.15.95

Alaska State Legislature

REPRESENTATIVE
GENE THERRIAULT
P O Box 55326
North Pole, Alaska 99705
(907) 488-0862

House District 33



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99801-1182
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House Of Representatives

SS HB 191 "An Act relating to the management and disposal of state land and resources; relating to certain remote parcel and homestead entry land purchase contracts and patents; and providing and effective date."

SPONSOR: Rep. Gene Therriault

SPONSOR STATEMENT:

This bill is a housekeeping measure intended to clarify certain Title 38 statutes governing DNR's management of state land and resources. SS HB 191 is intended to bring greater efficiency to the management of state lands without sacrificing public involvement in land use decisions.

As the House finance subcommittee chairman for the DNR budget, I have worked with the Department to come up with changes to Title 38 that would simplify programs and reduce costs to DNR. The passage of this bill will result in a more administratively efficient agency.

Although this bill is not intended to be a complete rewrite of Title 38, I believe it is a positive effort, supported by the administration to streamline state government.

FISCAL NOTE

No. 1
 Bill Version: CSSSHB 191 (RES)
 (H) Publish Date: 4/10/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: 20-Mar-95 Dept Affected: Natural Resources
 Title: An Act relating to the management and disposal of BRU: Resource Development
state land and resources; relating to certain remote parcels and ... Component: Land Development
 Sponsor: Representative Theriault
 Requestor: _____ Component Serial No. 431

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ None

POSITIONS						
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached sectional analysis.

Replaced

Prepared by: Ron Swanson, Director Phone: 762-2692
 Division: Land Date: 20-Mar-95
 Approved by Commissioner: [Signature] Date: 3-20-95
 Agency: Natural Resources

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* Delete Sect 29 add.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 191()

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the management and disposal of state land and resources;
2 rel' ng to certain remote parcel and homestead entry land purchase contracts and
3 ts; and providing for an effective date."

4 BE A ' ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 38.04.010(b) is amended to read:

6 (b) State land that is located beyond the range of existing schools and other
7 necessary public services, or that is located where development of sources of
8 employment is improbable, may be made available for seasonal recreational purposes
9 or for low density settlement. The seasonal recreation use or low density settlement
10 shall have sufficient separation between residences so that public services will not be
11 necessary or expected. The availability of timber, firewood, and water resources shall
12 be considered in determining separation between residences. Bv considering the
13 availability of timber, firewood, and water under this subsection or in making any
14 disposal decision, the state does not by virtue of that consideration imply any

1 right of the person receiving the disposal to an exclusive or other right to the
2 timber, firewood, or water, that the state will not make any other disposals in the
3 area, or that any disposals made will be limited in type or any other manner.

4 * Sec. 2. AS 38.04.020(a) is amended to read:

5 (a) The state [COMMISSIONER SHALL ESTABLISH A] land disposal
6 program consists of [BANK CONTAINING] state land identified and classified
7 under adopted regional land use plans for disposal into private ownership.

8 * Sec. 3. AS 38.04.020(b) is amended to read:

9 (b) The state land disposal program [BANK] does not include

- 10 (1) land nominated for selection or selected by a municipality to satisfy
11 a general grant land entitlement under AS 29.65 or former AS 29.18.201 - 29.18.213;
12 (2) land retained in state ownership for multiple-use management;
13 (3) land where less than a fee simple title has been conveyed;
14 (4) land retained in state ownership under an enactment of the
15 legislature or by the governor or a state agency under authority of law.

16 * Sec. 4. AS 38.04.020(d) is repealed and reenacted to read:

17 (d) On January 15 of the first regular session of each legislature, the
18 commissioner shall report to the legislature on the total acreage of land planned and
classified as suitable under this title for

- 19 (1) settlement purposes, including homestead, commercial, or industrial
20 disposal;
21 (2) agricultural disposal; and
22 (3) grazing leases.

23 * Sec. 5. AS 38.04.020(e) is repealed and reenacted to read:

24 (e) The commissioner may annually submit to the governor an appropriation
25 request for the entire amount of funding estimated to be necessary for each project
26 proposal to allow survey and disposal of land proposed to be offered for (1) homestead
27 staking under AS 38.09; (2) agricultural, commercial, industrial, or other uses under
28 AS 38.05.055 or 38.05.057; or (3) other subdivisions. Each project proposal shall
29 include the general location of the land and the estimated cost of preliminary feasibility
30 studies, engineering design work, right-of-way acquisition, and construction of access
31

1 roads and capital improvements required by municipal subdivision ordinance or
2 regulation of the platting authority or otherwise necessary to develop and market the
3 land.

4 * Sec. 6. AS 38.04.020(g) is amended to read:

5 (g) The [AFTER JULY 1 OF EACH YEAR, THE] commissioner shall direct
6 the expenditure of money appropriated for the disposal of land in response to requests
7 made under (e) [AND (f)] of this section for the following:

8 (1) land [LAND] designated as suitable for homestead disposal shall
9 be [CLASSIFIED AND] surveyed under this chapter and AS 38.05 and made available
10 for entry [STAKING AND LEASE] under AS 38.09; [.]

11 (2) land [LAND] designated as suitable for subdivision and homesite
12 disposal shall be surveyed, subdivided, [CLASSIFIED,] and disposed of under this
13 chapter, AS 38.05, and AS 38.08; [.]

14 (3) land [LAND] designated agricultural, commercial, industrial, or
15 suitable for other disposal shall be sold under AS 38.05.055 or 38.05.057.

16 * Sec. 7. AS 38.04.020(h) is amended to read:

17 (h) Individual parcels disposed of in subdivisions intended for private
18 residential or recreational use may not exceed five acres unless the commissioner
19 determines that a larger size is necessary to comply with municipal ordinances; [.] to
20 permit the design of a viable subdivision because of topographical features, soil
21 conditions, on-site sewage disposal requirements, or water drainage or supply
22 considerations that are unique to the subdivision; to increase the return to the state
23 from the sale of the parcels; [.] to minimize adverse effect on wildlife, fishery, public
24 recreation, timber, or other significant resources in the area; [.] or to minimize adverse
25 effect on other residential uses in the area.

26 * Sec. 8. AS 38.04.020(i) is amended to read:

27 (i) Nothing in this section prevents the disposal of other land by the
28 commissioner in accordance with AS 38.05.055, 38.05.057, 38.05.070, the issuance of
29 remote recreational cabin site leases or sales [PERMITS] under AS 38.05.600
30 [AS 38.05.079], AS 38.08, AS 38.09, or other law.

31 * Sec. 9. AS 38.04.021(a) is amended to read:

1 (a) A municipality may apply for financial assistance for the execution of a
2 land disposal program of general grant land entitlements received from the state under
3 AS 29.65 or former AS 29.18.201 - 29.18.213 by submitting a request to the
4 commissioner for inclusion in the request submitted to the governor [LEGISLATURE]
5 under AS 38.04.020(e). A municipality may request financial assistance for expenses
6 of surveying land, designing subdivision plats, installing improvements required by
7 municipal ordinance or regulation of the local platting authority, and other reasonable
8 direct costs of land disposal.

9 * Sec. 10. AS 38.04.021(b) is amended to read:

10 (b) A request by a municipality under this section must be accompanied by

11 (1) a schedule for the disposal of municipal land for the next five years;
12 the schedule shall be based on an assessment of the demand for private land within the
13 municipality [AND INCLUDED IN THE ASSESSMENT SUBMITTED UNDER
14 AS 38.04.020(f)];

15 (2) an estimate of the number of acres of municipal land that the
16 municipality plans to dispose of during each fiscal year of the five-year period;

17 (3) a description of the methods to be used for the disposal of
18 municipal land and the terms under which it will be offered to the public; and

19 (4) a description of the municipal land that the municipality plans to
20 dispose of each fiscal year during the five-year period.

21 * Sec. 11. AS 38.04.030 is amended to read:

22 Sec. 38.04.030. LAND AVAILABILITY PROGRAMS. Programs that may
23 be used by the director to make the state's land surface available for private use under
24 AS 38.04.020 - 38.04.055 include sale of whole or partial rights to the fee simple
25 estate, including conveyance of agricultural use rights; leasing; [OPEN-TO-ENTRY;]
26 homesiting; homesteading; permitting for construction and occupation of cabins in
27 isolated locations on land retained in state ownership; and other methods as provided
28 by regulation or other law. Notwithstanding a contrary provision of this title, a
29 land availability program adopted by regulation must provide for competitive
30 disposal, based on no less than fair market value, to serve the best interests of the
31 state.

1 * Sec. 12. AS 38.04.035 is amended to read:

2 Sec. 38.04.035. CRITERIA FOR PROGRAM SELECTION. In determining
3 which land availability program is appropriate for state land in different locations, the
4 director shall be guided by the following criteria:

5 (1) to cover public costs associated with private land use and to provide
6 the public with a fair return for publicly owned property, conveyance of state land to
7 private parties shall [SHOULD] be at fair market value except where otherwise
8 authorized by statute, or by an administrative regulation the adoption of which is
9 specifically permitted by statute;

10 (2) sale or lease programs should be used where land is readily
11 accessible to a major community center or where, because of a prime location on
12 waterfront or a transportation route or some other location characteristic, land has
13 relatively high real estate value;

14 (3) sale programs are preferred but lease programs should be used

15 (A) where special land use controls are required and there is a
16 high public interest in having certain types of land used for particular purposes;

17 (B) when the intended use is a temporary one;

18 (C) in commercial or industrial situations when a leasehold can
19 provide cash flow advantages to the lessee;

20 (D) when a unique location with special public values is
21 involved, as in a deep water port, hydroelectric site, or aquaculture facility;

22 (E) where current demand for private use is high, but
23 projections suggest that, in the future, the land may be more valuable for public
24 use, as in accessible waterfront recreation areas;

25 (4) [FOR ENABLING ISOLATED CABIN DEVELOPMENT IN
26 REMOTE LOCATIONS WHERE SURVEY AND CONVEYANCE IS
27 IMPRACTICAL, OR WHERE DISPOSAL OF LAND WOULD CAUSE POTENTIAL
28 CONFLICTS WITH OTHER RESOURCES AND USES, OR WHERE A LONG-
29 RANGE INTEREST IN PUBLIC OWNERSHIP AND USE EXIST, A SYSTEM FOR
30 CABIN PERMITS ON PUBLIC LAND MAY BE USED;

31 (5)] limited or conditional title may be granted when the state's best

1 interest so dictates; among other things, title limitations may include grants of
2 agricultural interest only, retention of development rights, and retention of scenic or
3 other easements; a conditional title may be tied to a development schedule or other
4 standards of performance.

5 * Sec. 13. AS 38.04.045(b) is amended to read:

6 (b) Before the issuance of a long-term lease under AS 38.05.070 or of a patent
7 for state land, an official cadastral survey shall be accomplished, unless a comparable,
8 approved survey exists that has been conducted by the federal Bureau of Land
9 Management. Before land may be offered under AS 38.05.055, 38.05.057, AS 38.08,
10 or AS 38.09, an official rectangular survey grid shall be established. The rectangular
11 survey section corner positions shall be monumented and shown on a cadastral survey
12 plat approved by the state. For those areas where the state may wish to convey
13 surface estate outside of an official rectangular survey grid, the commissioner may
14 waive monumentation of individual section corner positions and substitute an official
15 control survey with control points being monumented and shown on control survey
16 plats approved by the state. The commissioner may not issue more than one
17 conveyance for each section within a township outside of an official rectangular survey
18 grid. No portion of land to be conveyed may be located more than two miles from an
19 official survey control monument except that the commissioner may waive this
20 requirement on a determination that a single purpose use does not justify the
21 requirement if the existing status of the land is known with reasonable certainty. The
22 lots and tracts in state subdivisions shall be monumented and the cadastral survey and
23 plats for the subdivision shall be approved by the state. Where land is located within
24 a municipality with planning, platting, and zoning powers, plats for state subdivisions
25 shall comply with local ordinances and regulations in the same manner and to the same
26 extent as plats for subdivisions by other landowners. State subdivisions shall be filed
27 and recorded in the district recorder's office. The requirements of this section do not
28 apply to land made available [THROUGH A CABIN PERMIT SYSTEM,] for material
29 sales, for short-term leases, or for parcels adjoining a surveyed right-of-way, [OR FOR
30 LAND THAT HAS BEEN OPEN TO RANDOM STAKING UNDER THE REMOTE
31 PARCEL PROGRAM OR HOMESTEAD PROGRAM IN THE PAST]; however, for

1 short-term leases the lessee must comply with local subdivision ordinances unless
2 waived by the municipality under procedures specified by ordinance. In this subsection,
3 "a single purpose use" includes a communication site, an aid to navigation, and a park
4 site.

5 * Sec. 14. AS 38.05.050 is amended to read:

6 Sec. 38.05.050. DISPOSAL OF LAND FOR PRIVATE OWNERSHIP. The
7 commissioner shall determine the land to be disposed of for private use. The
8 commissioner shall determine the time and place of disposal. An auction sale, a
9 lottery sale, or a disposal of land for homesites may [SHALL] be held in a community
10 that is near the land to be sold or disposed of.

11 * Sec. 15. AS 38.05.055 is amended to read:

12 Sec. 38.05.055. AUCTION SALE PROCEDURES. Unless another method of
13 sale is required under this chapter, [AS 38.07, OR] AS 38.08, or AS 38.09, the sale
14 of state land shall be made at public auction to the highest qualified bidder as
15 determined by the director. The director may accept bids and sell state land under this
16 section at no less than 70 percent of the appraised fair market value of the land. [A
17 BIDDER MUST APPEAR IN PERSON AT THE AUCTION UNLESS MEDICAL
18 REASONS, ATTENDANCE AT SCHOOL, OR MILITARY SERVICE OUTSIDE
19 THE STATE PREVENT ATTENDANCE.] A bidder may be represented by an
20 attorney or agent at the auction [IF THE LAND OFFERED FOR DISPOSAL IS
21 COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND]. An aggrieved
22 bidder may appeal to the commissioner within five days after the sale for a review of
23 the director's determination. The sale shall be conducted by the director and at the
24 time of sale the successful bidder shall deposit an amount equal to five percent of the
25 purchase price. The director shall immediately issue a receipt containing a description
26 of the land or property purchased, the price bid, and the amount deposited. The
27 receipt shall be acknowledged in writing by the bidder.

28 * Sec. 16. AS 38.05.057(a) is amended to read:

29 (a) The commissioner may dispose of land, including land limited to use for
30 agricultural purposes, by lottery. The purchase price of land sold by lottery shall be
31 the fair market value of the land as determined by the commissioner. The

1 commissioner may sell land by lottery for less than the fair market value of the land
2 on a determination that scarcity of land for private use in the area of the land to be
3 sold has resulted in unrealistic land values. [THE COMMISSIONER SHALL
4 CONSULT WITH THE ASSESSOR OF A MUNICIPALITY BEFORE
5 DETERMINING THE PURCHASE PRICE FOR LAND THAT IS LOCATED IN
6 THE MUNICIPALITY AND THAT IS TO BE SOLD UNDER THIS SECTION.] The
7 lottery shall be conducted in public by the commissioner. A [AN APPLICANT MAY
8 NOT BE SELECTED TO PURCHASE LAND UNLESS THE APPLICANT IS
9 PRESENT ON THE DATE AND AT THE PLACE THAT THE LOTTERY IS
10 CONDUCTED UNLESS MEDICAL REASONS, ATTENDANCE AT SCHOOL, OR
11 MILITARY SERVICE OUTSIDE THE STATE PREVENT ATTENDANCE. AN
12 APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE
13 LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL,
14 INDUSTRIAL, OR AGRICULTURAL LAND. ON THE DAY OF THE LOTTERY
15 A] purchaser selected by lot shall deposit an amount equal to five percent of the
16 purchase price within 30 days after receiving notification of the selection.

17 * Sec. 17. AS 38.05.065(a) is amended to read:

18 (a) The contract of sale for land sold at public auction under AS 38.05.055
19 shall require the remainder of the purchase price to be paid in monthly, quarterly, or
20 annual installments over a period of not more than 20 years, with interest at the
21 [PREVAILING] rate provided in (i) of this section [FOR REAL ESTATE
22 MORTGAGE LOANS MADE BY THE FEDERAL LAND BANK FOR THE FARM
23 CREDIT DISTRICT FOR ALASKA AT THE TIME THE CONTRACT IS SIGNED].
24 Installment payments plus interest shall be set on the level-payment basis.

25 * Sec. 18. AS 38.05.065(b) is amended to read:

26 (b) The contract of sale for land sold under AS 38.05.057 or under former
27 AS 38.05.078 shall require the remainder of the purchase price to be paid in monthly,
28 quarterly, or annual installments over a period of not more than 20 years. Installment
29 payments plus interest shall be set on the level-payment basis. The interest rate to be
30 charged on installment payments is the [PREVAILING] rate provided in (i) of this
31 section [FOR REAL ESTATE MORTGAGE LOANS MADE BY THE FEDERAL

1 LAND BANK FOR THE FARM CREDIT DISTRICT FOR ALASKA AT THE TIME
2 THE CONTRACT IS SIGNED].

3 * Sec. 19. AS 38.05.065 is amended by adding a new subsection to read:

4 (i) The interest rate for contracts under this section is the prime rate as
5 reported in the Wall Street Journal on the first business day of the month in which the
6 contract is sent to the purchaser for signature, plus 4 percent; however, the total rate
7 of interest may not exceed 13.5 percent.

8 * Sec. 20. AS 38.05.067(d) is amended to read:

9 (d) This section does not apply to the sale of state land under AS 38.05.057,
10 AS 38.08. or [AS 38.04.020(g)(2) AND] AS 38.09.

11 * Sec. 21. AS 38.05.069(a) is amended to read:

12 (a) On a determination that the highest and best use of unoccupied land is for
13 agricultural purposes and that it is in the best interests of the state to sell or lease the
14 land, the commissioner may [SHALL] grant to an Alaska [ALASKAN] resident
15 owning and using or leasing and using land for agricultural purposes a first option at
16 the auction to purchase or lease the unoccupied land situated adjacent to land presently
17 held by the Alaska [ALASKAN] resident for the amount of the high bid received at
18 public auction. If more than one Alaska [ALASKAN] resident qualifies for a first
19 option under this section, eligibility for the first option shall be determined by lot and
20 the option must be exercised on the conclusion of the public auction. A parcel of
21 agricultural land sold under this section may not be less than 20 acres and a parcel of
22 agricultural land that is acquired by exercise of the option granted in this subsection
23 may not exceed 320 acres. Agricultural land that is acquired under this section must
24 be used for agricultural purposes as required by law.

25 * Sec. 22. AS 38.05.069(e)(2) is repealed and reenacted to read:

26 (2) "adjacent" means that a tract of land has one common boundary
27 point with presently held land or is separated from the presently held land only by a
28 physical barrier such as a road or stream.

29 * Sec. 23. AS 38.05.075(a) is amended to read:

30 (a) Except as provided in AS 38.05.035, 38.05.070, 38.05.073, [38.05.079,]
31 38.05.082, 38.05.083, 38.05.087, 38.05.102, 38.05.600, 38.05.810, and this section,

1 leasing shall be made at public auction to the highest qualified bidder as determined
2 by the commissioner. In the public notice of a lease to be offered at public auction,
3 the commissioner shall specify a minimum acceptable bid and the lease compensation
4 method. The lease compensation method shall be designed to maximize the return on
5 the lease to the state and shall be a form of compensation set out in AS 38.05.073(m).
6 An aggrieved bidder may appeal to the commissioner within five days for a review of
7 the determination. The leasing shall be conducted by the commissioner and the
8 successful bidder shall deposit at the auction the first year's rental or other lease
9 compensation as specified by the commissioner, or that portion of it that the
10 commissioner requires in accordance with the bid. The commissioner shall require,
11 under AS 38.05.860, qualified bidders to deposit a sum equal to any survey or
12 appraisal costs reasonably incurred by another qualified bidder acting in accordance
13 with the regulations of the commissioner or incurred by the department under
14 AS 38.04.045 and AS 38.05.840. If a bidder making a deposit of survey or appraisal
15 costs is determined by the commissioner to be the highest qualified bidder under this
16 subsection, the deposit shall be paid to the unsuccessful bidder who incurred those
17 costs or to the department if the department incurred the costs. All costs for survey
18 and appraisal shall be approved in advance in writing by the commissioner. The
19 commissioner shall immediately issue a receipt containing a description of the land or
20 interest leased, the price bid, and the terms of the lease to the successful qualified
21 bidder. If the receipt is not accepted in writing by the bidder under this subsection,
22 the commissioner may offer the land for lease again under this subsection. A lease,
23 on a form approved by the attorney general, shall be signed by the successful bidder
24 and by the commissioner within the period specified in the auction notice.

25 * Sec. 24. AS 38.05.082(b) is amended to read:

26 (b) The director may classify land as subject to leases for fisheries
27 development. In an area or region of the state for which a land use plan has not been
28 adopted under AS 38.04.065, the director may classify land for lease under this section
29 after notice under AS 38.05.945. The director may [SHALL] publicly invite
30 applications for lease of the selected areas. Each application shall be accompanied by
31 an affidavit to the effect that the applicant presently intends to personally utilize the

1 leased area for fishing purposes throughout the term of the lease [THE
2 FOLLOWING SEASON]. If two or more applications are received for the same shore
3 area, the director may offer [SHALL AWARD] the lease at public auction under
4 AS 38.05.075(a). If only one application is received and the appraisal value of the
5 lease is \$5.000 a year or less, the commissioner may issue a negotiated lease under
6 AS 38.05.070(b) [TO THE MOST QUALIFIED APPLICANT. IN DETERMINING
7 THE QUALIFICATIONS OF APPLICANTS, THE DIRECTOR SHALL CONSIDER
8 THE LENGTH OF TIME DURING WHICH THE APPLICANT HAS BEEN
9 ENGAGED IN SET NETTING, THE PROXIMITY OF THE PAST FISHING SITES
10 OF THE APPLICANT TO THE LAND TO BE LEASED, THE PRESENT ABILITY
11 OF THE APPLICANT TO UTILIZE THE LOCATION TO ITS MAXIMUM
12 POTENTIAL, AND OTHER FACTORS RELEVANT TO THE EQUITABLE
13 ASSIGNMENT OF THE DISPUTED AREA. IF THE DIRECTOR CANNOT
14 DETERMINE A PREFERENCE BETWEEN CONFLICTING APPLICANTS FOR
15 THE SAME LEASE SITE ON THE BASIS OF QUALIFICATIONS, THE
16 DIRECTOR SHALL SELECT BETWEEN THE APPLICANTS BY LOT. AN
17 AGGRIEVED APPLICANT MAY APPEAL TO THE COMMISSIONER WITHIN 30
18 DAYS FOR A REVIEW OF THE DIRECTOR'S DETERMINATION].

19 * Sec. 25. AS 38.05.082(c) is amended to read:

20 (c) A lease for set net fishing may be issued for any period not exceeding 10
21 years. If the commissioner determines that the land is not being utilized for the
22 purpose for which the lease is issued, the lease may be declared void. [THE
23 DIRECTOR SHALL ESTABLISH A REASONABLE RENTAL FOR THE LEASE,
24 EQUAL TO THE ADMINISTRATIVE COSTS INVOLVED IN PROCESSING THE
25 LEASEHOLD APPLICATIONS.]

26 * Sec. 26. AS 38.05.082(d) is amended to read:

27 (d) Subleasing and renewals of leases are governed by AS 38.05.095 and
28 38.05.102. Notwithstanding (b) of this section, a lease held under this section on
29 the effective date of this bill section may be renewed under terms and conditions
30 prescribed by the commissioner.

31 * Sec. 27. AS 38.05.083 is repealed and reenacted to read:

1 Sec. 38.05.083. AQUATIC FARMING AND HATCHERY SITE LEASES.

2 (a) The commissioner may offer to the public for lease at public auction under
3 AS 38.05.075 or by negotiation under AS 38.05.070 a site for aquatic farming or
4 related hatchery operations. Before a final decision to issue or renew a lease under
5 this section, the commissioner shall give notice and allow opportunity for comment in
6 accordance with AS 38.05.945, and may hold a hearing to take testimony. Before a
7 final decision to issue or renew a lease under this section, the commissioner shall
8 consider all relevant comment or testimony submitted under this section, AS 38.05.945,
9 or 38.05.946.

10 (b) The commissioner, for good cause, may deny an application for issuance
11 or renewal of a lease under this section, but shall provide the applicant with written
12 findings that explain the reasons for the denial.

13 (c) A site may be leased under this section for not less than the appraised fair
14 market value of the lease. The value of the lease shall be reappraised every five years.

15 (d) A lease under this section may be assigned, but if the assignee changes the
16 use of the site the lease reverts to the state.

17 (e) Before entering into a lease under this section, the commissioner shall
18 require the lessee to post a performance bond or provide other security to cover the
19 costs to the department of restoring the leased site in the event the lessee abandons the
20 site.

21 (f) The commissioner shall adopt regulations establishing criteria for the
22 approval or denial of leases under this section and for limiting the number of sites for
23 which leases may be issued in an area in order to protect the environment and natural
24 resources of the area. The regulations must provide for the consideration of upland
25 management policies and whether the proposed use of a site is compatible with the
26 traditional and existing uses of the area in which the site is located.

27 * Sec. 28. AS 38.05.090 is repealed and reenacted to read:

28 Sec. 38.05.090. REMOVAL OR REVERSION OF IMPROVEMENTS UPON
29 TERMINATION OF LEASES. (a) Unless otherwise agreed to in writing by the
30 commissioner, a lessee shall remove from a former leasehold

31 (1) all personal property, including above-ground and below-ground

1 tanks, transportable buildings, equipment, machinery, tools, and other goods, not
2 belonging to the state, within 30 days after termination of the lease; and

3 (2) all buildings and fixtures, including gravel pads, foundations, and
4 slabs, not belonging to the state, within 60 days after termination of the lease.

5 (b) Unless otherwise agreed to in writing by the commissioner, the lessee shall
6 restore the leasehold to a good and marketable condition, acceptable to the
7 commissioner, within 120 days after termination of the lease.

8 (c) If the lessee does not remove personal property, buildings, and fixtures as
9 required within the time specified under (a) of this section, title to the personal
10 property, buildings, and fixtures that remain automatically vests in the state unless the
11 commissioner elects to remove and dispose of the remaining personal property,
12 buildings, and fixtures of the lessee. The commissioner may assess upon the lessee
13 the cost of removing and disposing of personal property, buildings, and fixtures
14 remaining upon the land.

15 (d) If the lessee does not restore the land within the time period specified
16 under (b) of this section, the commissioner may have the land restored and assess the
17 costs upon the lessee.

18 (e) As part of a lease agreement, and in order to protect the public interest, the
19 commissioner may require terms for removal or reversion of improvements additional
20 to those specified in (a) - (d) of this section.

21 (f) Private residential improvements of a lessee that have become fixtures of
22 the land and that are not removed by that lessee upon termination of the lease shall be
23 purchased by the subsequent purchaser of the land if the improvements were
24 authorized in the former lease or by permit from the director and if they have a net
25 value of more than \$10,000. The net value is the value of the improvements as
26 determined by an appraisal approved by the commissioner, less all rents due the
27 department, all costs of restoration under (d) of this section, and all department
28 expenses estimated to be incurred in making the sale. After termination of the former
29 lessee's lease, and at additional times as determined necessary by the commissioner,
30 the value of the authorized residential fixtures shall be determined by an independent
31 appraisal made at the cost of the former lessee. A notice or offer by the state to sell

1 formerly leased land under this subsection must state (1) the appraised value of
 2 authorized residential fixtures remaining on the land that must be purchased, and (2)
 3 that that cost is included in the purchase price. Out of the proceeds of the sale, the
 4 department shall pay to the former lessee the appraised value of the residential
 5 improvements, less all rents due the department, all costs of restoration due the
 6 department under (d) of this section, and all department expenses incurred in making
 7 the sale.

8 (g) Personal property described in (c) of this section is not subject to AS 34.45
 9 (Uniform Unclaimed Property Act).

Deleted ← * Sec. 29. AS 38.05.130 is amended to read:

11 Sec. 38.05.130. DAMAGES AND POSTING OF BOND. Except for entry
 12 to post mining location corners under AS 38.05.195, 38.05.205, or 38.05.245, rights
 13 [RIGHTS] may not be exercised by the state, its lessees, successors or assigns under
 14 the reservation as set out in AS 38.05.125 until the state, its lessees, successors, or
 15 assigns make provision to pay the owner of the land full payment for all damages
 16 sustained by the owner, by reason of entering upon the land. If the owner for any
 17 cause refuses or neglects to settle the damages, the state, its lessees, successors,
 18 assigns, or an applicant for a lease or contract from the state for the purpose of
 19 prospecting for valuable minerals, or option, contract or lease for mining coal or lease
 20 for extracting geothermal resources, petroleum, or natural gas, may enter upon the land
 21 in the exercise of the reserved rights after posting a surety bond determined by the
 22 director, after notice and an opportunity to be heard, to be sufficient as to form,
 23 amount, and security to secure to the owner payment for damages, and may institute
 24 legal proceedings in a court where the land is located, as may be necessary to
 25 determine the damages that [WHICH] the owner may suffer.

26 * Sec. 30. AS 38.05.131(a) is amended to read:

27 (a) Unless specifically provided otherwise in AS 38.05.132 - 38.05.134, the
 28 provisions of AS 38.05.005 - 38.05.037 [AS 38.05.005 - 38.05.040], 38.05.140(f),
 29 38.05.180, 38.05.182 - 38.05.184, and 38.05.920 - 38.05.990 apply to the issuance of
 30 oil and gas exploration licenses and leases under AS 38.05.132 - 38.05.134.

31 * Sec. 31. AS 38.05.185(a) is amended to read:

1 (a) The acquisition and continuance of rights in and to deposits on state land
2 of minerals, which on January 3, 1959, were subject to location under the mining laws
3 of the United States, shall be governed by AS 38.05.185 - 38.05.275. Nothing in
4 AS 38.05.185 - 38.05.275 affects the law pertaining to the acquisition of rights to
5 mineral deposits owned by any other person or government. The director, with the
6 approval of the commissioner, shall determine that land from which mineral deposits
7 may be mined only under lease, and, subject to the limitations of AS 38.05.300, that
8 land that shall be closed to location under AS 38.05.185 - 38.05.275 [MINING].
9 State land may not be closed to [MINING OR MINERAL] location under
10 AS 38.05.185 - 38.05.275 except as provided in AS 38.05.300 and unless the
11 commissioner makes a finding that mining would be incompatible with significant
12 surface uses on the state land. State land may not be restricted to mining under lease
13 unless the commissioner determines that potential use conflicts on the state land
14 require that mining be allowed only under written leases issued under AS 38.05.205
15 or the commissioner has determined that the land was mineral in character at the time
16 of state selection. The determinations required under this subsection shall be made in
17 compliance with land classification orders and land use plans developed under
18 AS 38.05.300.

19 * Sec. 32. AS 38.05.190(a) is amended to read:

20 (a) The right to acquire exploration and mining rights under AS 38.05.185 -
21 38.05.275 may be acquired or held only by

22 (1) citizens of the United States at least 18 years of age;

23 (2) legal guardians or trustees of citizens of the United States under 18
24 years of age on behalf of the citizens;

25 (3) persons at least 18 years of age who have declared their intention
26 to become citizens of the United States;

27 (4) [ALIENS AT LEAST 18 YEARS OF AGE IF THE LAWS OF
28 THEIR COUNTRY GRANT LIKE PRIVILEGES TO CITIZENS OF THE UNITED
29 STATES;

30 (5)] corporations organized under the laws of the United States or of
31 any state or territory of the United States and qualified to do business in this state [,

1 EXCEPT THAT IF MORE THAN 50 PERCENT OF THE STOCK OF A
2 CORPORATION IS OWNED OR CONTROLLED BY ALIENS WHO ARE NOT
3 QUALIFIED, THE CORPORATION IS NOT QUALIFIED TO ACQUIRE OR HOLD
4 THE RIGHTS];

5 (5) [(6)] associations of persons described in (1) - (4) [(1) - (5)] of this
6 subsection.

7 * Sec. 33. AS 38.05.211(d) is repealed and reenacted to read:

8 (d) The rental amount established under this section shall be revised by the
9 commissioner as provided in this section based on changes in the Consumer Price
10 Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average)
11 compiled by the Bureau of Labor Statistics, United States Department of Labor, as
12 revised, rebased or replaced by that bureau. The reference base index is the index for
13 January - June, 1989, as revised or rebased by that bureau. The rental amount shall
14 be revised by the commissioner if the change between the index for the first six
15 months of the current year and the most recent index used to revise the rental, or the
16 reference base index if the rental amount has never been revised, equals or exceeds \$5.
17 The rental amount shall be increased or decreased, as appropriate, by an amount equal
18 to the change in the index described in this subsection rounded to the nearest whole
19 \$5 unit. The commissioner shall calculate the change in the index annually and, if the
20 rental amount must be revised, shall adopt a regulation establishing the revised rental
21 amount. A revised rental amount applies to a rental payment if the regulation
22 establishing the revised rental amount took effect at least 90 days before the date the
23 rental payment is due.

24 * Sec. 34. AS 38.05.255 is amended to read:

25 Sec. 38.05.255. SURFACE USE OF LAND OR WATER. Surface uses of
26 land or water included within mining properties by owners of those properties shall be
27 limited to those necessary for the prospecting for, extraction of, or basic processing of
28 mineral deposits and shall be subject to reasonable concurrent uses. Leases
29 [PERMITS] for millsites and tailings disposal may be issued [GRANTED] by the
30 director. The leases [PERMITS] shall be conditioned upon payment of a reasonable
31 annual rent [CHARGE] for the lease [USE] and restriction to [CONTINUANCE OF]

1 the limited use. Timber from land open to mining without lease, except timberland,
2 may be used by a mining claimant or prospecting site locator for the mining or
3 development of the location or adjacent claims under common ownership. On other
4 land, timber may be acquired as provided in this chapter. Use of water shall be made
5 in accordance with AS 46.15.

6 * Sec. 35. AS 38.05.255 is amended by adding a new subsection to read:

7 (b) A lease issued under this section is exempt from the provisions of
8 AS 38.05.075 - 38.05.080. The commissioner, by regulation, shall establish
9 appropriate leasing procedures and annual rent amounts for leases under this section.

10 * Sec. 36. AS 38.05.265 is amended to read:

11 Sec. 38.05.265. ABANDONMENT. Failure to properly record a certificate of
12 location or a statement of annual labor, [FILE WITH THE DIRECTOR WITHIN THE
13 TIME PRESCRIBED A LEASE APPLICATION,] pay any required annual rental, pay
14 any required production royalty, or keep location boundaries clearly marked as
15 required by AS 38.05.185 - 38.05.275 and by regulations adopted under these sections
16 constitutes abandonment of all rights acquired under the mining claim, leasehold
17 location, lease, or site involved, and the claim, location, lease, or site is subject to
18 relocation by others. A locator or claimant of an abandoned location or a successor
19 in interest may not relocate the location until one year after abandonment. A statement
20 of annual labor that does not accurately set out the essential facts is void and of no
21 effect. If an annual rental or a royalty payment is deficient but is otherwise timely
22 paid, abandonment does not result if full payment is made within

23 (1) the period prescribed by a deficiency notice from the commissioner;

24 or

25 (2) 30 days after a final judgment establishing the amount due if the
26 deficiency amount due was contested.

27 * Sec. 37. AS 38.05 is amended by adding a new section to read:

28 ARTICLE 12A. REMOTE RECREATIONAL CABIN SITE SALES AND LEASES.

29 Sec. 38.05.600. REMOTE RECREATIONAL CABIN SITES. (a) The
30 commissioner may provide for the sale or lease of state land for remote recreational
31 cabin sites in areas of the state with dispersed populations if the land is classified for